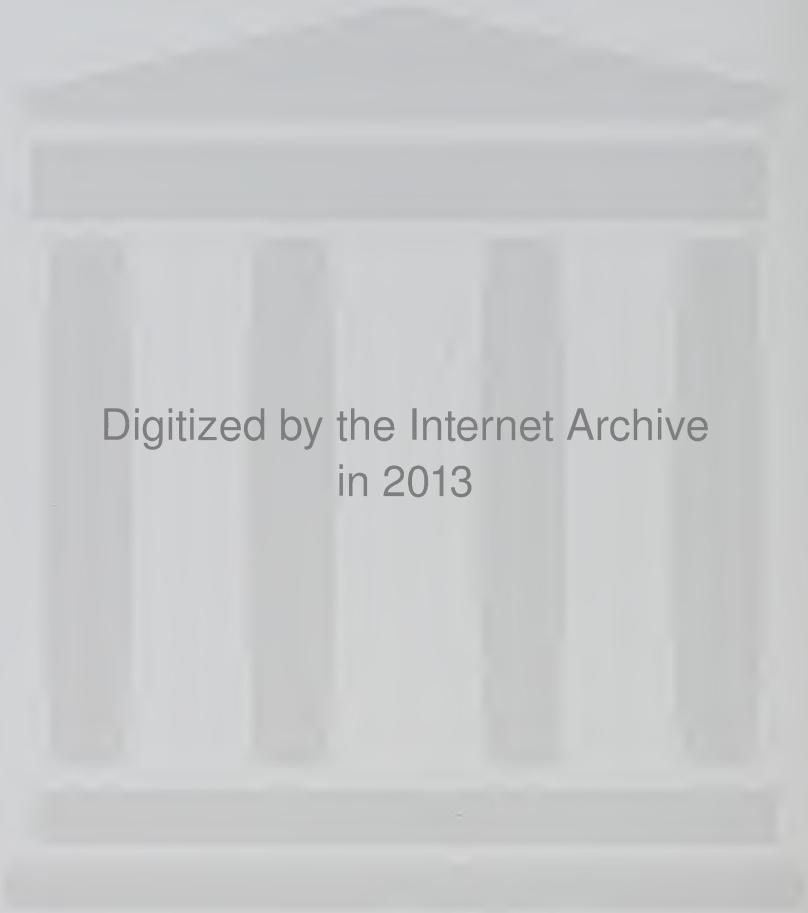




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# **IDAHO CODE**

CONTAINING THE

# **GENERAL LAWS OF IDAHO**

## **ANNOTATED**

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ORIGINALLY PUBLISHED BY AUTHORITY OF  
LAWS 1947, CHAPTER 224

REPUBLISHED BY AUTHORITY OF  
LAWS 1949, CHAPTER 167 AS AMENDED

Compiled Under the Supervision of the  
Idaho Code Commission

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COMMISSIONERS

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EXECUTIVE SECRETARY

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**TITLES 35-37**

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## **PUBLISHER'S NOTE**

Since the publication in 2002 of the last edition of this volume, many laws have been amended or repealed and many new laws have been enacted. The resulting increase in the size of the cumulative supplement for the former volume has made it necessary to revise this volume. Accordingly, this new volume with Replacement Titles 35 to 37 is issued with the approval and under the direction of the Idaho Code Commission.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

**Idaho Reports**

**Pacific Reporter**

**Federal Supplement**

**Federal Reporter**

**United States Supreme Court Reports, Lawyers' Edition**

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

I.R.C.P.              Idaho Rules of Civil Procedure

I.R.E.              Idaho Rules of Evidence

I.C.R.              Idaho Criminal Rules

M.C.R.              Misdemeanor Criminal Rules

I.I.R.              Idaho Infraction Rules

I.J.R.              Idaho Juvenile Rules

I.C.A.R.              Idaho Court Administrative Rules

I.A.R.              Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first volume of this set.



## ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Article 3, § 22 of the Idaho State Constitution provides: "No act shall take effect until sixty days from the end of the session at which the same shall have been passed, except in case of emergency, which emergency shall be declared in the preamble or in the body of the law."

Section 67-510 Idaho Code provides: "No act shall take effect until July 1 of the year of the regular session or sixty (60) days from the end of the session at which the same shall have been passed, whichever date occurs last, except in case of emergency, which emergency shall be declared in the preamble or body of the law.

Every joint resolution, unless a different time is prescribed therein, takes effect from its passage."

This table is given in order that the effective date of acts, not carrying an emergency or which do not specify an effective date, may be determined with a minimum of delay.

Year	Adjournment Date
1921	March 5, 1921
1923	March 9, 1923
1925	March 5, 1925
1927	March 3, 1927
1929	March 7, 1929
1931	March 5, 1931
1931 (E.S.)	March 13, 1931
1933	March 1, 1933
1933 (E.S.)	June 22, 1933
1935	March 8, 1935
1935 (1st E.S.)	March 20, 1935
1935 (2nd E.S.)	July 10, 1935
1935 (3rd E.S.)	July 31, 1936
1937	March 6, 1937
1937 (E.S.)	November 30, 1938
1939	March 2, 1939
1941	March 8, 1941
1943	February 28, 1943
1944 (1st E.S.)	March 1, 1944
1944 (2nd E.S.)	March 4, 1944
1945	March 9, 1945
1946 (1st E.S.)	March 7, 1946
1947	March 7, 1947
1949	March 4, 1949
1950 (E.S.)	February 25, 1950
1951	March 12, 1951
1952 (E.S.)	January 16, 1952
1953	March 6, 1953

1955 .....	March 5, 1955
1957 .....	March 16, 1957
1959 .....	March 9, 1959
1961 .....	March 2, 1961
1961 (1st E.S.) .....	August 4, 1961
1963 .....	March 19, 1963
1964 (E.S.) .....	August 1, 1964
1965 .....	March 18, 1965
1965 (1st E.S.) .....	March 25, 1965
1966 (2nd E.S.) .....	March 5, 1966
1966 (3rd E.S.) .....	March 17, 1966
1967 .....	March 31, 1967
1967 (1st E.S.) .....	June 23, 1967
1968 (2nd E.S.) .....	February 9, 1968
1969 .....	March 27, 1969
1970 .....	March 7, 1970
1971 .....	March 19, 1971
1971 (E.S.) .....	April 8, 1971
1972 .....	March 25, 1972
1973 .....	March 13, 1973
1974 .....	March 30, 1974
1975 .....	March 22, 1975
1976 .....	March 19, 1976
1977 .....	March 21, 1977
1978 .....	March 18, 1978
1979 .....	March 26, 1979
1980 .....	March 31, 1980
1981 .....	March 27, 1981
1981 (E.S.) .....	July 21, 1981
1982 .....	March 24, 1982
1983 .....	April 14, 1983
1983 (E.S.) .....	May 11, 1983
1984 .....	March 31, 1984
1985 .....	March 13, 1985
1986 .....	March 28, 1986
1987 .....	April 1, 1987
1988 .....	March 31, 1988
1989 .....	March 29, 1989
1990 .....	March 30, 1990
1991 .....	March 30, 1991
1992 .....	April 3, 1992
1992 (E.S.) .....	July 28, 1992
1993 .....	March 27, 1993
1994 .....	April 1, 1994
1995 .....	March 17, 1995
1996 .....	March 15, 1996
1997 .....	March 19, 1997
1998 .....	March 23, 1998
1999 .....	March 19, 1999

2000 .....	April 5, 2000
2001 .....	March 30, 2001
2002 .....	March 15, 2002
2003 .....	May 3, 2003
2004 .....	March 20, 2004
2005 .....	April 6, 2005
2006 .....	April 11, 2006
2006 (E.S) .....	August 25, 2006
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# TITLE 35

## FENCES

### CHAPTER.

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2. INCLOSURES OF RESERVOIRS AND DUMPS, §§ 35-201, 35-202.

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### CHAPTER 1

## FENCES IN GENERAL

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- 35-103. Erection of partition fences.
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- 35-107. Prohibition against removal.
- 35-108. Removal of fence built by mistake.
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**35-101. Lawful fences in general.** — A lawful fence, except as hereinafter provided, must be not less than four and one half feet (4-1/2') high, and the bottom board, rail, pole or wire must not be more than twenty inches (20") above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.

#### History.

R.S., § 1300; reen. R.C. & C.L., § 1264; C.S., § 1956; I.C.A., § 34-101.

### STATUTORY NOTES

#### Cross References.

Animals running at large, § 25-2101 et seq.  
Coterminous owners to maintain fences between them, § 55-312.

Estrays, § 25-2301 et seq.

Herd districts, § 25-2401 et seq.

Liens on trespassing stock, § 25-2201.

### JUDICIAL DECISIONS

#### ANALYSIS

#### Disrepair.

Fence posts.

Instructions.

Negligence.

Purpose.

Railroad fence.

#### Disrepair.

Evidence sufficiently supported trial court's findings that, at the time plaintiff's automobile struck defendant's calf on the highway, the fence, owned and maintained by defendant to inclose his cattle, was in disrepair and did not conform to the standards prescribed

for lawful fences. *Soran v. Schoessler*, 87 Idaho 425, 394 P.2d 160 (1964), overruled on other grounds, *Moreland v. Adams*, 143 Idaho 687, 152 P.3d 558 (2007).

#### Fence Posts.

A finding that fence posts of defendant

appellant, who was sued for damages sustained by plaintiff's automobile when it struck defendant's calf along the highway, "were not set substantially in the ground and were rotted at the ground causing many posts to lean perceptibly," was sustained by the evidence. *Soran v. Schoessler*, 87 Idaho 425, 394 P.2d 160 (1964), overruled on other grounds, *Moreland v. Adams*, 143 Idaho 687, 152 P.3d 558 (2007).

#### **Instructions.**

In suit by motorist to recover for damage occasioned by a nighttime collision with a cow roaming a heavily traveled highway, the jury should have been instructed on the doctrine of *res ipsa loquitur*, that doctrine having application in view of lack of sufficient explanation of failure to keep cow inclosed and lack of showing fence through which cow broke conformed to the legal requirements of a fence. *O'Connor v. Black*, 80 Idaho 96, 326 P.2d 376 (1958).

#### **Negligence.**

Evidence sustained trial court's conclusion that defendant, whose calf was struck by plaintiff's automobile, failed to act as a reasonable and prudent person with respect to his pasture fence and in allowing his livestock on the public highway, that plaintiff acted prudently, and that defendant's negligence

was the proximate cause of plaintiff's damage. *Soran v. Schoessler*, 87 Idaho 425, 394 P.2d 160 (1964), overruled on other grounds, *Moreland v. Adams*, 143 Idaho 687, 152 P.3d 558 (2007).

#### **Purpose.**

The legal fence laws of this state are "fencing out" statutes and recognize the rancher's right to allow cattle to roam. *Maguire v. Yanke*, 99 Idaho 829, 590 P.2d 85 (1978).

#### **Railroad Fence.**

In suit by plaintiff against railroad to recover damages for loss of horse and colt on defendant's right of way at a spot where the only barrier was a 15 foot fill, evidence that the defendant had erected a fence shortly after the accident where the accident had occurred was material for the purpose of showing antecedent negligence on defendant's part, and defendant's recognition of a defect it was bound to remedy. *Zenier v. Spokane Int'l R.R.*, 78 Idaho 196, 300 P.2d 494 (1956).

**Cited in:** *Correll v. Pearson*, 88 Idaho 295, 399 P.2d 266 (1965); *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App. 1984); *State v. Flynn*, 107 Idaho 206, 687 P.2d 596 (Ct. App. 1984).

#### **RESEARCH REFERENCES**

**Am. Jur.** — 4 Am. Jur. 2d Animals, § 40 et seq.

35A Am. Jur. 2d Fences, § 1 et seq.

**C.J.S.** — 36A C.J.S. Fences, § 23 et seq.

#### **35-102. Lawful fences described.** — Lawful fences are described as follows:

1. If made of stone, four feet (4') high, two feet (2') base, and one foot (1') thick on top.
2. If it be a worm fence, the rails must be well laid and at least four feet (4') high.
3. If made of posts, with boards, rails or poles, the posts must be well set in the ground and not more than eight feet (8') apart, with not less than three (3) six-inch (6") boards, or rails, or poles not less than two and one-half inches (2 1/2") in diameter at the small end; if four (4) poles are used, they must not be less than two inches (2") in diameter at the small end. The top board, rail or pole must not be less than four feet (4') from the ground, the spaces well divided, and the boards, rails or poles securely fastened to the posts; if poles not less than three inches (3") in diameter at the small end are used, the posts may be set twelve feet (12') apart.
4. If wire be used in the construction of fences, the posts must not be more than twenty-four feet (24') apart, set substantially in the ground, and three (3) substantial stays must be placed at equal distances between the posts, and all wires must be securely fastened to each post and stay with not less than three (3) barbed wires, or four (4) coiled spring wires of not less than

number nine (9) gauge. The bottom wire shall be not more than twenty-one inches (21") from the ground, and the other wires a proper distance apart. The wires must be well stretched and the fence not less than forty-seven inches (47") high. If all woven wire fencing is used, the top and bottom wire must be not less than number nine (9) gauge, or two (2) number thirteen (13) gauge wires twisted together, with intermediate bars not less than twelve inches (12") apart and of not less than number fourteen (14) gauge wire, and the stay wires not more than twelve inches (12") apart, and the top wire not less than forty-seven inches (47") from the ground. If woven wire less in height is used, it must be brought to the height of forty-seven inches (47") by additional barbed wires, or coiled spring wire of not less than number nine (9) gauge, and not more than twelve inches (12") between the wires: provided, that if barbed wire only is used, and the posts are not more than sixteen feet (16') apart, no stays need be used. Provided further that the minimum forty-seven inch (47") fence height specified above may be reduced to forty-two inches (42") for right-of-way fences on the state highway system when mutually agreed by the Idaho director of department of transportation and the director of the Idaho fish and game department as necessary to accommodate big game animals at major migration crossings.

5. If made in whole or in part of brush, ditch, pickets, hedge, or any other materials, the fence, to be lawful, must be equal in strength and capacity to turn stock, to the fence above described.

6. All fences in good repair, of suitable material and of every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains, that present a suitable obstruction to stock are deemed lawful fences.

**History.**

R.S., § 1301; am. 1901, p. 207, § 1; am. 1907, p. 132, § 1; reen. R.C. & C.L., § 1265; C.S., § 1957; I.C.A., § 34-102; am. 1967, ch. 261, § 1, p. 731.

**STATUTORY NOTES****Cross References.**

Director of department of fish and game, § 36-106.  
Director of department of transportation, § 40-503.  
Lien on livestock breaking into inclosure, § 25-2201.

**Compiler's Notes.**

The name of state highway engineer in subdivision 4 has been changed to director of department of transportation on authority of S.L. 1974, ch. 286, § 1 and S.L. 1974, ch. 12, § 13. (§ 40-125 repealed, now see § 40-505).

**JUDICIAL DECISIONS****ANALYSIS**

Disrepair.  
Fence posts.  
Instructions.  
Negligence.  
Railroad fence.

**Disrepair.**

Evidence sufficiently supported trial court's finding that, at the time plaintiff's automobile struck defendant's calf on the highway, the

fence, owned and maintained by defendant to inclose his cattle was in disrepair and did not conform to the standards prescribed for lawful fences. *Soran v. Schoessler*, 87 Idaho 425,

394 P.2d 160 (1964), overruled on other grounds, Moreland v. Adams, 143 Idaho 687, 152 P.3d 558 (2007).

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A finding that fence posts of defendant appellant, who was sued for damages sustained by plaintiff's automobile when it struck defendant's calf along the highway, "were not set substantially in the ground and were rotted at the ground causing many posts to lean perceptibly," were sustained by the evidence. Soran v. Schoessler, 87 Idaho 425, 394 P.2d 160 (1964), overruled on other grounds, Moreland v. Adams, 143 Idaho 687, 152 P.3d 558 (2007).

#### Instructions.

In suit by motorist to recover for damage occasioned by a nighttime collision with a cow roaming a heavily traveled highway, the jury should have been instructed on the doctrine of *res ipsa loquitur*, that doctrine having application in view of lack of sufficient explanation of failure to keep cow inclosed and lack of showing fence through which cow broke conformed to the legal requirements of a fence. O'Connor v. Black, 80 Idaho 96, 326 P.2d 376 (1958).

#### Negligence.

Evidence sustained trial court's conclusion

that defendant, whose calf was struck by plaintiff's automobile, failed to act as a reasonable and prudent person with respect to his pasture fence and in allowing his livestock on the public highway, that plaintiff acted prudently, and that defendant's negligence was the proximate cause of plaintiff's damage. Soran v. Schoessler, 87 Idaho 425, 394 P.2d 160 (1964), overruled on other grounds, Moreland v. Adams, 143 Idaho 687, 152 P.3d 558 (2007).

#### Railroad Fence.

In suit by plaintiff against railroad to recover damages for loss of horse and colt on defendant's right of way at a spot where the only barrier was a 15 foot fill, evidence that the defendant had erected a fence shortly after the accident where the accident had occurred was material for the purpose of showing antecedent negligence on defendant's part, and defendant's recognition of a defect it was bound to remedy. Zenier v. Spokane Int'l R.R., 78 Idaho 196, 300 P.2d 494 (1956).

**Cited in:** State v. Flynn, 107 Idaho 206, 687 P.2d 596 (Ct. App. 1984).

**35-103. Erection of partition fences.** — When two or more persons own land adjoining which is inclosed by one (1) fence, and it becomes necessary for the protection of the rights and interests of one (1) party that a partition fence be made between them, the other or others, when notified, must proceed to erect, or cause to be erected, one half (1/2) of such partition fence; said fence to be erected on, or as near as practicable to, the line of said land. And if, after notice given in writing, either party fails to erect and complete, within six (6) months time thereafter, one half (1/2) of such fence, the party giving the notice may proceed to erect the entire partition fence and collect by law one half (1/2) the costs of such fence from the other party, and he has a lien upon the land thus partitioned.

#### History.

1885, p. 118, § 1; R.S., § 1302; reen. R.C. & C.L., § 1266; C.S., § 1958; I.C.A., § 34-103.

## STATUTORY NOTES

#### Cross References.

Coterminous owners to maintain fences between them, § 55-312.

Partition of decedents' estates, § 15-3-911.

Partition proceedings, § 6-501 et seq.

Railroad rights of way, damages in eminent domain proceedings to include costs of fences and cattle-guards, § 7-711; bond for payment authorized, § 7-714.

Trespass of animals, § 25-2201 et seq.

**JUDICIAL DECISIONS****ANALYSIS**

Failure to maintain.

Limitation.

Prerequisite.

**Failure to Maintain.**

Where erection and maintenance of fence is provided for by agreement which has run for some years, upon failure of one of the parties to keep up fence as agreed, other party may resort to remedy provided by statute or action for breach of contract. *Tsuboi v. Cohn*, 40 Idaho 102, 231 P. 708 (1924).

**Limitation.**

This section does not allow the erection of a statutory fence on another's property. *Porter*

v. Bassett

146 Idaho 399, 195 P.3d 1212 (2008).

**Prerequisite.**

A prerequisite for the application of this section is that the adjoining parcels of land be enclosed by one fence. Where property owners claimed that the parcels were enclosed by one fence, but presented no evidence of such, this section does not apply. *Porter v. Bassett*, 146 Idaho 399, 195 P.3d 1212 (2008).

**35-104. Care of fences by adjoining owners.** — Each adjoining land owner, unless both otherwise agree, or unless other arrangements have heretofore been made, must construct and keep in repair that half of the line fence between their respective tracts of land which is to his left when he is standing on his own land facing the other; unless the owner of one (1) of said tracts choose to allow his land to be uninclosed: provided, that one (1) party may, for his own convenience, strengthen, or render hog-tight, the whole or any part of said fence by stretching one (1) or more additional wires thereon or otherwise; in which event the other shall not be liable for his proportion of the additional cost: provided further, if one (1) of the parties shall render such fence hog-tight and the other shall at any time use his field for the pasture of hogs, sheep or goats, without a herder, such other shall become liable as a joint user or owner, and shall, upon demand of the party building the hog-tight fence, pay his just proportion thereof. In case viewers are appointed, as provided in section 35-106[, Idaho Code], the report of such viewers must be in conformity with this section.

**History.**

1885, p. 118, § 1; R.S., § 1303; am. 1907, p. 133, § 2; reen. R.C. & C.L., § 1267; C.S.,

§ 1959; I.C.A., § 34-104.

**STATUTORY NOTES****Cross References.**

Coterminous owners to maintain fences between them, § 55-312.

**Compiler's Notes.**

The bracketed insertion in the last sentence

was added by the compiler to conform to the statutory citation style.

**JUDICIAL DECISIONS****Failure to Maintain.**

Where erection and maintenance of fence is provided for by agreement which has run for some years, upon failure of one of parties to

keep up fence as agreed, other party may resort to remedy provided by statute or action for breach of contract. *Tsuboi v. Cohn*, 40 Idaho 102, 231 P. 708 (1924).

**RESEARCH REFERENCES**

**Am. Jur.** — 35A Am. Jur. 2d Fences, § 1 et seq.  
**C.J.S.** — 36A C.J.S. Fences, § 7.

**35-105. Use of division fence in making inclosure.** — When one (1) of such adjoining proprietors has allowed his land to lie uninclosed, and afterward incloses it, he owes and is indebted to such adjoining owner one half (1/2) the value of any division fence owned by the other, used by him in forming such inclosure; and each must thereafter keep one half (1/2) of such fence in repair.

**History.**

1885, p. 118, § 1; R.S., § 1304; reen. R.C. & C.L., § 1268; C.S., § 1960; I.C.A., § 34-105.

**35-106. Disagreement between owners — Viewers.** — If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five (5) days' notice, to a justice of the peace of the township, if there be one, if not, to the probate judge, for the appointment of three (3) viewers, who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one (1) proprietor, how much the other must pay as his proportion of the value.
2. If the fence or the whole thereof is not built, which part thereof must afterward be built and kept in repair by each.

The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one (1) party is to pay the other a proportion also fixed, such proportion must be paid within thirty (30) days after notice of such determination, and if not so paid, may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars (\$3.00) each, one half (1/2) to be paid by each proprietor.

**History.**

1885, p. 118, § 1; R.S., § 1305; reen. R.C. & C.L., § 1269; C.S., § 1961; I.C.A., § 34-106.

**STATUTORY NOTES****Cross References.**

Report of viewers to conform to law, § 35-104.

courts, referred to in the introductory paragraph, were abolished by S.L. 1969, ch. 100. References to justices of the peace and probate judges are now to be to district judges or magistrate judges of the district court. See § 1-103.

**Compiler's Notes.**

Justice of the peace courts and probate

**35-107. Prohibition against removal.** — When one (1) party ceases to improve his land, or open his inclosure, he must not take away any part of the partition fence belonging to him and adjoining the next inclosure, if the

owner or occupant of such adjoining inclosure will, within two (2) months, after the same is ascertained, pay therefor such sum as is agreed upon by the parties, or, if failing to agree, then such sum as may be adjudged by viewers as provided in the last section; nor must such partition fence be removed when by so doing it will expose to destruction any crops in such inclosures.

**History.** R.C. & C.L., § 1270; C.S., § 1962; I.C.A., 1885, p. 118, § 4; am. R.S., § 1306; reen. § 34-107.

**35-108. Removal of fence built by mistake.** — When any person has built, by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one (1) year from the time of discovering such mistake, go upon the land of such other person and remove such fence, doing no unnecessary damage thereby.

**History.** R.C. & C.L., § 1271; C.S., § 1963; I.C.A., 1885, p. 118, § 5; am. R.S., § 1307; reen. § 34-108.

**35-109. Restrictions on occupant's right to remove fence.** — The occupant or owner of land whereon a fence has been built by mistake, must not throw down or in any manner disturb such fence during the period which the person who built it is authorized by section 35-108[, Idaho Code,] to remove it, when by so doing he will expose any crop to destruction.

**History.** R.C. & C.L., § 1272; C.S., § 1964; I.C.A., 1885, p. 118, § 6; am. R.S., § 1308; reen. § 34-109.

#### STATUTORY NOTES

**Compiler's Notes.**

The bracketed insertion near the end of the

section was added by the compiler to conform to the statutory citation style.

**35-110. Survey of line.** — The person building such fence, or the occupant or owner of the land whereon the same is built, may, upon notice to the other party, whenever doubts arise about the location of such fence, procure the services of a professional land surveyor to establish the boundary line between their respective lands, and the line so established is sufficient notice to the party making the mistake, so as to require him to remove such fence within one (1) year thereafter.

**History.**

1885, p. 118, § 7; am. R.S., § 1309; reen. § 34-110; am. 1963, ch. 87, § 1, p. 282; am. R.C. & C.L., § 1273; C.S., § 1965; I.C.A., 2002, ch. 7, § 1, p. 10.

#### JUDICIAL DECISIONS

**Legal Boundary.**

This section did not require the landowner to move the fence because there was no evidence the fence was erected in its current location by accident; although the fence en-

croached on the neighbor's deeded property, it now marked the legal boundary between the parties. Flying Elk Inv., LLC v. Cornwall, 149 Idaho 9, 232 P.3d 330 (2010).

**35-111. Removal of partition fence.** — In all cases where the inclosures of two (2) or more persons are divided by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such inclosure, or to make a lane of passage between such adjoining inclosures, such person is at liberty to remove his share or part of such partition fence, on giving six (6) months' notice in writing of such intention to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county.

**History.** R.C. & C.L., § 1274; C.S., § 1966; I.C.A.,  
1885, p. 118, § 8; am. R.S., § 1310; reen. § 34-111.

**35-112. Establishment of gates.** — In all cases where a partition fence exists between parties, and a gate is established for passage through their lands, any other person may pass through such gate free, doing no unnecessary damage, and if any such person leave any such gate open, or does other damage to the premises, he is liable to the party aggrieved in double damages.

**History.** R.C. & C.L., § 1275; C.S., § 1967; I.C.A.,  
1885, p. 118, § 9; am. R.S., § 1311; reen. § 34-112.

## CHAPTER 2

### INCLOSURES OF RESERVOIRS AND DUMPS

#### SECTION.

**35-201. Quartz mills — Reservoirs and dumps to be inclosed.**

#### SECTION.

**35-202. Liability for failure to inclose.**

**35-201. Quartz mills — Reservoirs and dumps to be inclosed.** — The owner or operator of any quartz mill must inclose with a good and substantial fence, sufficient to turn stock, all reservoirs and dumps or other material, known to contain that which is injurious to the health of stock.

#### History.

1873, p. 61, § 1; am. R.S., § 1335; reen.

R.C. & C.L., § 1276; C.S., § 1968; I.C.A.,  
§ 34-201.

**35-202. Liability for failure to inclose.** — Every person who fails to comply with the provisions of section 35-201[, Idaho Code,] is liable to the owner of any stock injured by drinking the water or acids that flow from such mill, in twice the damage sustained.

#### History.

1873, p. 61, § 2; am. R.S., § 1336; reen.

R.C. & C.L., § 1277; C.S., § 1969; I.C.A.,  
§ 34-202.

## STATUTORY NOTES

#### Compiler's Notes.

The bracketed insertion near the middle of

the section was added by the compiler to conform to the statutory citation style.

## CHAPTER 3

### BARBED WIRE

**SECTION.**

**35-301.** Careless exposure of barbed wire unlawful.

**35-302.** Notice to owner.

**SECTION.**

**35-303.** Owner's liability after notice.

**35-304.** Procedure in case of unknown owner.

**35-305.** Penalty.

**35-301. Careless exposure of barbed wire unlawful.** — It shall be unlawful for any person, firm or corporation, who, having barbed wire or barbed wire fences, to allow the same to be left down or strewn around on the ground in such a manner that livestock are liable to be injured thereby: provided, however, that no person, firm or corporation shall be liable for barbed wires left down or strewn about where the same are not so exposed that there is danger of injury to animals running at large.

**History.**

1915, ch. 123, § 1, p. 269; compiled and

reen. C.L. 114:1; C.S., § 2596; I.C.A., § 34-

301.

**35-302. Notice to owner.** — It shall be the duty of any person, sheriff, deputy sheriff, constable or policeman having knowledge by written notice or otherwise that any said barbed wire or barbed wire fence is so down or strewn on the ground to give notice either verbally or otherwise to such person, firm or corporation that said barbed wire or barbed wire fence is so down or strewn on the ground.

**History.**

1915, ch. 123, § 2, p. 269; reen. C.L. 114:2; C.S., § 2597; I.C.A., § 34-302.

**35-303. Owner's liability after notice.** — Any person, firm or corporation who, after knowing by his own knowledge or by receiving such notice as provided in section 35-302[*, Idaho Code*], shall fail to remove same within ten (10) days after such notice, shall be subject to the fines contained herein.

**History.**

1915, ch. 123, § 3, p. 269; reen. C.L. 114:3; C.S., § 2598; I.C.A., § 34-303.

#### STATUTORY NOTES

**Compiler's Notes.**

The bracketed insertion near the middle of

the section was added by the compiler to conform to the statutory citation style.

#### RESEARCH REFERENCES

**A.L.R.** — Barbed wire fence as nuisance. 80  
A.L.R.3d 962.

**35-304. Procedure in case of unknown owner.** — It shall be the duty of any sheriff, deputy sheriff or constable who by personal knowledge or otherwise knowing of any barbed wire or barbed wire fence being so strewn

or down as provided in section 35-301[, Idaho Code], on any ranch or fence which has been abandoned, and the owner of such fence or ranch is unknown or has left the state so that notice cannot be served on such person, firm or corporation to take or cause to be taken up, such barbed wire or barbed wire fence, and sell the same at public auction to the highest bidder and the proceeds shall go to cover the expense of the removal of said barbed wire or barbed wire fence, and if there be any money left over from such sale, it shall be turned in to the county treasurer of the county wherein such fence or ranch is located.

**History.**

1915, ch. 123, § 4, p. 269; reen. C.L. 114:4;  
C.S., § 2599; I.C.A., § 34-304.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion near the middle of

the section was added by the compiler to conform to the statutory citation style.

**35-305. Penalty.** — Any person, firm or corporation violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor and on conviction thereof shall be fined in any sum not less than five dollars (\$5.00) or more than twenty-five dollars (\$25.00), in the discretion of the court.

**History.**

1915, ch. 123, § 5, p. 269; reen. C.L. 114:5;  
C.S., § 2600; I.C.A., § 34-305.

# TITLE 36

## FISH AND GAME

### CHAPTER.

1. FISH AND GAME COMMISSION, §§ 36-101 — 36-124.
2. CLASSIFICATIONS AND DEFINITIONS, §§ 36-201, 36-202.
3. ISSUANCE AND SALE OF LICENSES, §§ 36-301 — 36-310.
4. LICENSES TO HUNT, FISH AND TRAP, §§ 36-401 — 36-417.
5. RESTRICTIONS ON POSSESSION, TRANSPORTATION, SALE AND USE OF WILDLIFE, §§ 36-501 — 36-505.
6. COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE, §§ 36-601 — 36-606.
7. CAPTIVE WILDLIFE, §§ 36-701 — 36-716.
8. COMMERCIAL FISHING, §§ 36-801 — 36-805.
9. PROTECTION OF FISH, §§ 36-901 — 36-909.
10. STATE BOUNDARY WATERS — RECIPROCAL AGREEMENTS, §§ 36-1001 — 36-1006.
11. PROTECTION OF ANIMALS AND BIRDS, §§ 36-1101 — 36-1120.
12. CHECK STATIONS — WASTE OF WILDLIFE, §§ 36-1201, 36-1202.
13. ENFORCEMENT AND APPLICATION OF FISH AND GAME LAW, §§ 36-1301 — 36-1305.

### CHAPTER.

14. GENERAL PENAL PROVISIONS, §§ 36-1401 — 36-1407.
15. PUBLIC SAFETY, §§ 36-1501 — 36-1511.
16. RECREATIONAL TRESPASS — LANDHOLDER LIABILITY LIMITED, §§ 36-1601 — 36-1604.
17. COUNTY FISH HATCHERIES, §§ 36-1701, 36-1702.
18. FEDERAL AID FOR FISH AND WILDLIFE RESTORATION PROJECTS, §§ 36-1801 — 36-1807.
19. WILDLIFE PRESERVES, §§ 36-1901 — 36-1914.
20. PACIFIC MARINE FISHERIES COMPACT, §§ 36-2001 — 36-2003.
21. OUTFITTERS AND GUIDES, §§ 36-2101 — 36-2120.
22. SHOOTING PRESERVES, §§ 36-2201 — 36-2216.
23. WILDLIFE VIOLATOR COMPACT, §§ 36-2301 — 36-2303.
24. SPECIES CONSERVATION, §§ 36-2401 — 36-2405.

## CHAPTER 1

### FISH AND GAME COMMISSION

#### SECTION.

- 36-101. Fish and game department.
- 36-102. Idaho fish and game commission.
- 36-103. Wildlife property of state — Preservation.
- 36-104. General powers and duties of commission.
- 36-105. Commission orders, rules and proclamations.
- 36-106. Director of department of fish and game.
- 36-107. Fish and game account.
- 36-108. Fish and game expendable trust account.
- 36-109. Fish and game nonexpendable trust account.
- 36-110. Fish and game federal account.
- 36-111. Fish and game set-aside account.

#### SECTION.

- 36-112. Animal damage control fund.
- 36-113. Electrofishing permits — Water quality data.
- 36-114. Big game primary depredation account. [Repealed.]
- 36-115. Nonexpendable big game depredation fund — Expendable big game depredation fund.
- 36-116. Wolves — Solicitation for transfer.
- 36-117 — 36-119. [Reserved.]
- 36-120. State game farms and fish hatcheries — Restrictions on employees.
- 36-121. Special counsel for department.
- 36-122. Advisory committee.
- 36-123. Winter feeding advisory committees.
- 36-124. Reciprocal licensure agreements with Indian tribes.

**36-101. Fish and game department.** — A department of fish and game is hereby established. Said department shall, for the purposes of section 20, article IV of the constitution of the state of Idaho, be an executive department of the state government. The department shall have its principal office in Ada county.

**History.**

I.C., § 36-101, as added by 1976, ch. 95, § 2, p. 315; am. 2001, ch. 183, § 10, p. 613.

**STATUTORY NOTES****Prior Laws.**

Former title 36, chapter 1, which comprised of §§ 36-101 to 36-128, was repealed by S.L. 1976, ch. 95, § 1.

**Compiler's Notes.**

As enacted the section heading of this section read: "Idaho fish and game code and department."

The fish and game law dates back to 1863-1864. It was variously amended and codified in R.S., §§ 7185-7197. S.L. 1893, p. 157, was a further codification and provided for the appointment of county game wardens by the county commissioners. S.L. 1895, p. 152, re-enacted and amended the latter act, but omitted reference to game wardens, leaving the enforcement of the law to sheriffs and constables, as had been the law prior to the act of 1893. S.L. 1899, p. 428, provided for the appointment of a state fish and game warden and prescribed his powers and duties. The legislature continued to amend the fish and game regulations from time to time and by S.L. 1903, p. 188, § 8, a license was first required.

The law was codified in the Revised Codes, the powers and duties of the state fish and game warden being covered in R.C., §§ 195-198; the state fish hatchery, R.C., §§ 857-862; regulations concerning fishing and hunting, R.C., §§ 7180-7203. In S.L. 1909, p. 85, the legislature repealed these sections and codi-

fied the fish and game law in one act. To this law there were numerous direct and implied amendments: S.L. 1909, p. 152; S.L. 1911, ch. 62, p. 171; S.L. 1915, ch. 90, p. 210; S.L. 1915, ch. 96, p. 220; S.L. 1915, ch. 140, p. 298; S.L. 1917, ch. 32, p. 75; S.L. 1917, ch. 37, p. 85, and S.L. 1917, ch. 56, p. 149. These were included in the rearrangement of the law in Compiled Laws.

The legislature again codified the fish and game law in S.L. 1919, ch. 65, p. 203. This provided for the establishment of a bureau of fish and game in the department of law enforcement created by S.L. 1919, ch. 8, p. 43. This latter act repealed C.L. 117:1-7, 9, 10, 13-15, relating to the fish and game warden, deputies, and clerks, and gave to the department of law enforcement general powers sufficient to authorize the employment of all necessary employees for the bureau of fish and game. The provisions of nearly all of these repealed sections, however, were reenacted in parts of §§ 2-8 of the 1919 codification of the fish and game law, but as the latter part of § 53 of ch. 65 of the 1919 act provided that "nothing herein contained shall be construed to amend or repeal the provisions of an act of the 15th session of the legislature, designated senate bill 19," (1919, ch. 8, above referred to).

Init. Meas. 1939, amended by S.L. 1943, ch. 151, established a fish and game commission and prescribed its functions and duties.

**JUDICIAL DECISIONS**

**Cited in:** Robb v. Nielson, 71 Idaho 222, 229 P.2d 981 (1951).

**DECISIONS UNDER PRIOR LAW****Constitutionality.**

It is within the police power of state to enact such general laws as may be necessary for protection of fish and game and to regulate

and restrict the right to take game or fish, and it may absolutely prohibit the taking thereof for traffic or commerce. Sherwood v. Stephens, 13 Idaho 399, 90 P. 345 (1907).

**36-102. Idaho fish and game commission.** — (a) Creation. There is hereby created the Idaho fish and game commission. The department of fish and game of the state of Idaho is hereby placed under the supervision, management and control of said Idaho fish and game commission, herein-after referred to as the commission or as said commission.

(b) Membership — Appointment — Qualifications. The commission shall consist of seven (7) members, to be appointed by the governor of the state of Idaho, who shall hold office during the pleasure of the governor and who

shall be subject to removal by him. The selection and appointment of said members shall be made solely upon consideration of the welfare and best interests of fish and game in the state of Idaho, and no person shall be appointed a member of said commission unless he shall be well informed upon, and interested in, the subject of wildlife conservation and restoration. No member shall hold any other elective or appointive office, state, county or municipal, or any office in any political party organization. Not more than four (4) of the members of said commission shall at any time belong to the same political party. Each of the members of said commission shall be a citizen of the United States, and of the state of Idaho, and a bona fide resident of the region from which he is appointed as hereinafter set forth. Said members so appointed shall act and assume full powers and duties upon appointment, as herein provided, but such appointments shall be subject to confirmation by the senate at its next session.

(c) Creation of Regions. For the purpose of this act, the state of Idaho is divided into seven (7) regions, which shall be named:

- (1) Panhandle region to consist of the counties of Boundary, Bonner, Kootenai, Shoshone and Benewah;
- (2) Clearwater region to consist of the counties of Latah, Clearwater, Nez Perce, Lewis and Idaho;
- (3) Southwestern region to consist of the counties of Adams, Valley, Washington, Payette, Gem, Boise, Canyon, Ada, Elmore and Owyhee;
- (4) Magic Valley region to consist of the counties of Camas, Blaine, Gooding, Lincoln, Minidoka, Jerome, Twin Falls and Cassia;
- (5) Southeastern region to consist of the counties of Bingham, Power, Bannock, Caribou, Oneida, Franklin and Bear Lake;
- (6) Upper Snake River region to consist of the counties of Clark, Fremont, Butte, Jefferson, Madison, Teton and Bonneville;
- (7) Salmon region to consist of the counties of Lemhi and Custer.

Each of the above enumerated regions shall, at all times, be represented by one (1) member of the commission, appointed from said region by the governor.

(d) Terms of Office.

(1) Except as provided in paragraph (2) of this subsection, the members of said commission shall be appointed for a term of four (4) years; provided, that in the case of the death of any commissioner, or his removal from office as hereinbefore provided, the governor shall appoint a successor from the same region for the unexpired term. Beginning in 1999 and thereafter, the term of each member shall expire on June 30. The term of any member which would otherwise expire prior to June 30 shall be extended to June 30. No member shall serve more than two (2) terms, except that a member appointed to fill an unexpired term may be appointed to two (2) additional, full terms. Members serving on the effective date of this act shall be eligible to complete the term they are then serving, and shall thereafter be governed by the provisions of this subsection limiting the length of any additional terms to four (4) years and the number of terms to two (2).

(2) In appointing successors for the members whose terms expire in 1999, the governor shall designate two (2) members to be appointed for a term

of three (3) years and two (2) members to be appointed for a term of four (4) years. Successors to the members appointed for a term of three (3) years shall be appointed for a term of four (4) years thereafter.

(e) Oath of Office — Bond. Each commissioner shall, before entering upon his official duties, take and subscribe to the official oath, in writing, as provided by section 59-401, Idaho Code, to which said official oath there shall be added a declaration as to the name of the political party to which such commissioner belongs, and said commissioner shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

(f) Compensation and Reimbursement for Expenses. Each member of the commission shall be compensated as provided by section 59-509(h), Idaho Code. All such compensation and expenses shall be paid from the fish and game account.

(g) Quorum. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power.

(h) Office and Supplies. The commission shall have its principal office in Ada county and is authorized to purchase supplies, equipment, printed forms, and notices, and to issue such publications as may be necessary.

#### **History.**

I.C., § 36-102, as added by 1976, ch. 95, § 2, p. 315; am. 1979, ch. 78, § 1, p. 193; am. 1980, ch. 247, § 29, p. 582; am. 1990, ch. 387, § 1, p. 1065; am. 1994, ch. 406, § 1, p. 1276; am. 1996, ch. 172, § 1, p. 555; am. 1998, ch. 334, § 1, p. 1078; am. 2001, ch. 183, § 11, p. 613.

#### **STATUTORY NOTES**

##### **Cross References.**

Enforcement of fish and game law, § 36-1301 et seq.

Fish and game account, § 36-107.

Special counsel for department, § 36-121.

##### **Compiler's Notes.**

The words "this act", in the introductory paragraph in subsection (c), refer to S.L.

1976, ch. 95, which is compiled as § 22-102A and throughout Title 36. Probably, the reference should be to "this title", being title 36, Idaho Code.

The phrase "effective date of this act", in subdivision (d)(1), refers to the effective date of S.L. 1994, ch. 406, which was July 1, 1994.

#### **JUDICIAL DECISIONS**

##### **DECISIONS UNDER PRIOR LAW**

##### **ANALYSIS**

##### **Powers of governor.**

Regulation of fish and game.

##### **Powers of Governor.**

As long as the action of the governor in removing an officer is within the limits of the powers conferred upon him, that is, if he acted within his jurisdiction, the courts will not interfere to arrest his action or to review the proceedings, except to determine the question of jurisdiction. Hawley v. Bottolfsen, 61 Idaho 101, 98 P.2d 634 (1940).

##### **Regulation of Fish and Game.**

This is a question of the right to establish private ponds and stock them with fish under the provisions of the fish and game laws. The doctrine is well established that, by reason of the state's control over fish and game within its limits, it is within the police power of the legislature to enact such general laws as may be necessary for the protection and regulation

of the public's right in such fish and game, even to the extent of restricting the use of or right of property in game after it has been

taken. *Sherwood v. Stephens*, 13 Idaho 399, 90 P. 345 (1907).

**36-103. Wildlife property of state — Preservation.** — (a) **Wildlife Policy.** All wildlife, including all wild animals, wild birds, and fish, within the state of Idaho, is hereby declared to be the property of the state of Idaho. It shall be preserved, protected, perpetuated, and managed. It shall be only captured or taken at such times or places, under such conditions, or by such means, or in such manner, as will preserve, protect, and perpetuate such wildlife, and provide for the citizens of this state and, as by law permitted to others, continued supplies of such wildlife for hunting, fishing and trapping.

(b) **Commission to Administer Policy.** Because conditions are changing and in changing affect the preservation, protection, and perpetuation of Idaho wildlife, the methods and means of administering and carrying out the state's policy must be flexible and dependent on the ascertainment of facts which from time to time exist and fix the needs for regulation and control of fishing, hunting, trapping, and other activity relating to wildlife, and because it is inconvenient and impractical for the legislature of the state of Idaho to administer such policy, it shall be the authority, power and duty of the fish and game commission to administer and carry out the policy of the state in accordance with the provisions of the Idaho fish and game code. The commission is not authorized to change such policy but only to administer it.

#### History.

I.C., § 36-103, as added by 1976, ch. 95, § 2, p. 315.

#### STATUTORY NOTES

##### Cross References.

Federal aid for fish and wildlife-restoration projects, § 36-1801 et seq.

Forest, wildlife and range experiment station to conduct cooperative investigation and research with state fish and game commission, § 38-703; to conduct research into the propagation, protection, taking and produc-

tive management of game, fish, fur animals, birds and other wildlife, § 38-709.

##### Compiler's Notes.

The Idaho fish and game code, referred to near the end of subsection (b), is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as it was enacted by S.L. 1976, ch. 95, § 2.

#### JUDICIAL DECISIONS

##### Check Stations.

The check station set up by the wildlife officer was narrowly focused to advance the public's interest in wildlife preservation, protection, perpetuation and management and was statutorily authorized and in compliance with subsection (b) of this section and § 36-

1201(b). *State v. Thurman*, 134 Idaho 90, 996 P.2d 309 (Ct. App. 1999).

**Cited in:** *State v. Medley*, 127 Idaho 182, 898 P.2d 1093 (1995); *State v. Thompson*, 136 Idaho 322, 33 P.3d 213 (Ct. App. 2001).

#### DECISIONS UNDER PRIOR LAW

##### Regulations.

Regulatory provisions sought to be enforced must be specifically shown to be reasonable

and necessary for preservation of the fishery. *State v. Tinno*, 94 Idaho 759, 497 P.2d 1386 (1972).

Specific regulations promulgated hereunder must take proper account of the special and distinct nature of Indian treaty rights. State v. Tinno, 94 Idaho 759, 497 P.2d 1386 (1972).

**36-104. General powers and duties of commission. —**

(a) Organization — Meetings. The members of the commission shall annually meet at their offices and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.

2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the supply thereof, then it shall make a rule or proclamation embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of any act of God or any other sudden or unexpected emergency, declare by temporary rule or proclamation the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such temporary rule shall be made in accordance with the provisions of chapter 52, title 67, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5.(A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by

lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules as it shall prescribe.

(B) The commission may, under rules or proclamations as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing landowners of property valuable for habitat or propagation purposes of deer, elk or antelope, or the landowner's designated agent(s) to hunt deer, elk or antelope in controlled hunts containing the eligible property owned by those landowners in units where any permits for deer, elk or antelope are limited.

(C) A nonrefundable fee as specified in section 36-416, Idaho Code, shall be charged each applicant for a controlled hunt permit. Successful applicants for controlled hunt permits shall be charged the fee as specified in section 36-416, Idaho Code. Additionally, a fee may be charged for telephone and credit card orders in accordance with subsection (e)11. of section 36-106, Idaho Code. The department shall include a checkoff form to allow applicants to designate one dollar (\$1.00) of such nonrefundable application fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. The net proceeds from the nonrefundable fee shall be deposited in the fish and game account and none of the net proceeds shall be used to purchase lands.

(D) The commission may by rule establish procedures relating to the application for the purchase of controlled hunt bonus or preference points by sportsmen and the fee for such application shall be as specified in section 36-416, Idaho Code.

6. Adopt rules pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is located of the intended action. The board of county commissioners shall have ten (10) days after official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to

purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

- (A) For fish hatcheries, nursery ponds, or game animal or game bird farms;
  - (B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;
  - (C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;
  - (D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.
8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.
9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.
10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10) residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

- (A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.
- (B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.
- (C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.
12. Adopt rules pertaining to the application for, issuance of and administration of a lifetime license certificate system.
13. Adopt rules governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state. The fee for each permit shall be as provided for in section 36-416, Idaho Code.
14. Adopt rules governing the application for and issuance of licenses by telephone and other electronic methods.
15. Enter into agreements with cities, counties, recreation districts or other political subdivisions for the lease of lands or waters, in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code, to cost-effectively provide recreational opportunities for taxpayers or residents of those local governments or political subdivisions.
16. Adopt rules governing a mentored hunting program.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

#### **History.**

I.C., § 36-104, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 116, § 1, p. 249; am. 1986, ch. 52, § 1, p. 149; am. 1986, ch. 288, § 1, p. 724; am. 1986, ch. 329, § 1, p. 809; am. 1987, ch. 159, § 1, p. 311; am. 1989, ch. 316, § 1, p. 812; am. 1989, ch. 372, § 1, p. 937; am. 1990, ch. 372, § 1, p. 1023; am. 1992, ch. 81, § 1, p. 222; am. 1993, ch. 197, § 1, p. 539; am.

1993, ch. 216, § 17, p. 587; am. 1994, ch. 82, § 1, p. 190; am. 1994, ch. 218, § 5, p. 679; am. 1995, ch. 64, § 1, p. 158; am. 1998, ch. 170, § 1, p. 567; am. 1999, ch. 372, § 1, p. 1016; am. 2000, ch. 211, § 1, p. 538; am. 2001, ch. 183, § 12, p. 613; am. 2002, ch. 224, § 1, p. 644; am. 2004, ch. 17, § 1, p. 16; am. 2009, ch. 201, § 1, p. 643; am. 2011, ch. 109, § 1, p. 280.

#### **STATUTORY NOTES**

##### **Cross References.**

Annual report of director to legislature, § 36-106(e)7.  
 County fish hatcheries, § 36-1701 et seq.  
 Director of department of fish and game as secretary of commission, § 36-106.  
 Disposition of fines and forfeitures, § 19-4705.  
 Enforcement of fish and game law, § 36-1301 et seq.  
 Fish and game account, § 36-107.  
 Neglect to account for moneys received under fish and game law, felony, § 36-310.  
 Notice by mail, § 60-109A.

Screening devices, maintenance by in artificial watercourses, § 36-908.

Snake river forming boundary, fishing in restricted, § 36-1001.

Wildlife restoration projects, § 36-1801 et seq.

##### **Amendments.**

The 2009 amendment, by ch. 201, added subsection (b)5(D).

The 2011 amendment, by ch. 109, added paragraph (b)16.

##### **Legislative Intent.**

Section 5 of S.L. 2009, ch. 201 provided:

"Legislative Intent. The legislature recognizes a benefit to the public from elk and mule deer population monitoring to assess abundance, sex ratios and juvenile production and from studies to monitor survival and mortality factors of elk, deer and moose. It is the intent of the Legislature that a Department of Fish and Game continue to monitor and study populations of elk, deer and moose, including predation by wolves, to provide this beneficial information."

#### Compiler's Notes.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

#### Effective Dates.

Section 2 of S.L. 1993, ch. 197 read: "This act shall be in full force and effect on and after July 1, 1993, and the provisions of this act shall apply to all contracts entered into between the Fish and Game Commission and a seller of real property on and after July 1, 1993."

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

Section 6 of S.L. 2009, ch. 201 declared an emergency effective April 15, 2009. Approved April 22, 2009.

### JUDICIAL DECISIONS

#### ANALYSIS

#### Native Americans. Regulations.

##### Native Americans.

A Nez Perce Native American could not be prosecuted by the state for killing a deer out of season in National Forest within the boundaries of lands ceded by Native Americans to United States under Treaty of 1855, although outside the Reservation, since reservation in the treaty by the Native Americans to hunt upon "open and unclaimed lands" still exists; hence Native Americans are entitled to hunt at any time of the year in any of the lands ceded to the United States. *State v. Arthur*, 74 Idaho 251, 261 P.2d 135 (1953), cert. denied, 347 U.S. 937, 74 S. Ct. 627, 98 L. Ed. 1087 (1954) (decided under prior law).

Specific regulations promulgated hereunder must take proper account of the special and distinct nature of Indian treaty rights. *State v. Tinno*, 94 Idaho 759, 497 P.2d 1386 (1972) (decided under prior law).

The state may regulate a tribe's fishing rights as necessary for conservation of the fish, but the state must demonstrate that its regulation is a reasonable and necessary conservation measure, and that its application to the Native Americans is necessary in the interest of conservation; moreover, in order to regulate a tribe's fishing rights, the state must demonstrate that the tribe's own conservation measures are insufficient to meet the needs of conservation. *Shoshone-Bannock Tribes v. Fish & Game Comm'n*, 42 F.3d 1278 (9th Cir. 1994).

##### Regulations.

Regulatory provisions sought to be enforced must be specifically shown to be reasonable and necessary for preservation of the fishery. *State v. Tinno*, 94 Idaho 759, 497 P.2d 1386 (1972) (decided under prior law).

**36-105. Commission orders, rules and proclamations.** — (1) Adoption and Publication of Rules and Orders. All rules and orders adopted pursuant to the provisions of this title shall be made in accordance with chapter 52, title 67, Idaho Code. Said rules and orders may also be given such other publicity as the commission may deem desirable.

(2) Violation of Rules, Proclamations and Orders. All rules, proclamations and orders made as herein provided shall have full force and effect as law and any person violating any such rule, proclamation or order of the commission, adopted and published as herein set forth, shall be found guilty as set forth in section 36-1401, Idaho Code.

(3) Notwithstanding any other provision of chapter 52, title 67, Idaho Code, the Idaho fish and game commission and the director of the Idaho fish and game department shall be excepted from the requirements of rulemaking when adopting, repealing, or amending any proclamation relating to setting of any season or limit on numbers, size, sex or species of wildlife classified by the commission as game animals, game birds,

furbearers, migratory birds, salmon, steelhead and resident fish which may be taken in this state if:

- (a) Notice of the proposed proclamation is published in the Idaho administrative bulletin and is provided in the same manner as an open meeting under section 67-2343, Idaho Code;
- (b) Notice is given to the director of the legislative services office for review by the germane joint subcommittee as soon as possible after adoption by the commission; and
- (c) The proclamation shall be published in a pamphlet or brochure as provided in section 59-1012, Idaho Code, and distributed without charge to the public. The text of the proclamation published in a pamphlet or brochure shall be the official text of the proclamation. Judicial notice shall be taken of the proclamation pamphlet or brochure.

**History.**

I.C., § 36-105, as added by 1976, ch. 95, § 2, p. 315; am. 1979, ch. 79, § 1, p. 195; am. 1991, ch. 44, § 1, p. 83; am. 1992, ch. 81, § 2, p. 222; am. 1992, ch. 263, § 56, p. 783; am. 1998, ch. 170, § 2, p. 567.

**STATUTORY NOTES**

**Cross References.**

Enforcement of fish and game law, § 36-1301 et seq.

Legislative services office, § 67-701 et seq.

General penal provisions of fish and game law, § 36-1401 et seq.

Publication of notices, § 60-101 et seq.

**Amendments.**

This section was amended by two 1992 acts

which appear to be compatible and have been compiled together.

The 1992 amendment, by ch. 81, § 2, in present subsection (2) deleted "and punished" following "shall be found guilty", substituted "section" for "sections" following "as set forth in" and deleted "and 36-1402" following "36-1401."

The 1992 amendment, by ch. 263, § 56, renumbered subsections (a) and (b) as subsections (1) and (2) and added subsection (3).

**36-106. Director of department of fish and game.** — (a) Office of Director Created. The commission shall appoint a director of the department of fish and game, hereinafter referred to as the director, who shall be a person with knowledge of, and experience in, the requirements for the protection, conservation, restoration, and management of the wildlife resources of the state. The director shall not hold any other public office, nor any office in any political party organization, and shall devote his entire time to the service of the state in the discharge of his official duties, under the direction of the commission.

(b) Secretary to Commission. The director or his designee shall serve as secretary to the commission.

(c) Compensation and Expenses. The director shall receive such compensation as the commission, with the concurrence and approval of the governor, may determine and shall be reimbursed at the rate provided by law for state employees for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties.

(d) Oath and Bond. Before entering upon the duties of his office, the director shall take and subscribe to the official oath of office, as provided by section 59-401, Idaho Code, and shall, in addition thereto, swear and affirm that he holds no other public office, nor any position under any political committee or party. Such oath, or affirmation, shall be signed in the office of the secretary of state.

The director shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Duties and Powers of Director.

1. The director shall have general supervision and control of all activities, functions, and employees of the department of fish and game, under the supervision and direction of the commission, and shall enforce all the provisions of the laws of the state, and rules and proclamations of the commission relating to wild animals, birds, and fish and, further, shall perform all the duties prescribed by section 67-2405, Idaho Code, and other laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

2. The director is hereby authorized to appoint as many classified employees as the commission may deem necessary to perform administrative duties, to enforce the laws and to properly implement management, propagation, and protection programs established for carrying out the purposes of the Idaho fish and game code.

3. The appointment of such employees shall be made by the director in accordance with chapter 53, title 67, Idaho Code, and rules promulgated pursuant thereto, and they shall be compensated as provided therein. Said employees shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

4. The director is hereby authorized to establish and maintain fish hatcheries for the purpose of hatching, propagating, and distributing all kinds of fish.

5.(A) The director, or any person appointed by him in writing to do so, may take wildlife of any kind, dead or alive, or import the same, subject to such conditions, restrictions and rules as he may provide, for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes deemed by him to be of interest to the fish and game resources of the state.

(B) The director shall have supervision over all of the matters pertaining to the inspection, cultivation, propagation and distribution of the wildlife propagated under the provisions of title 36, Idaho Code. He shall also have the power and authority to obtain, by purchase or otherwise, wildlife of any kind or variety which he may deem most suitable for distribution in the state and may have the same properly cared for and distributed throughout the state of Idaho as he may deem necessary.

(C) The director is hereby authorized to issue a license/tag/permit to a nonresident landowner who resides in a contiguous state for the purpose of taking one (1) animal during an emergency depredation hunt which includes the landowner's Idaho property subject to such conditions, restrictions or rules as the director may provide. The fee for this license/tag/permit shall be equal to the costs of a resident hunting license, a resident tag fee and a resident depredation permit.

(D) Unless relocation is required pursuant to subparagraph (E) herein, notwithstanding the provisions of section 36-408, Idaho Code, to the contrary, the director shall not expend any funds, or take any action, or

authorize any employee or agent of the department or other person to take any action, to undertake actual transplants of bighorn sheep into areas they do not now inhabit for the purpose of augmenting existing populations until:

- (i) The boards of county commissioners of the counties in which the release is proposed to take place have been given reasonable notice of the proposed release.
- (ii) The affected federal and state land grazing permittees and owners or leaseholders of private land in or contiguous to the proposed release site have been given reasonable notice of the proposed release.
- (iii) The president pro tempore of the senate and the speaker of the house of representatives have received from the director a plan for the forthcoming year that details, to the best of the department's ability, the proposed transplants which shall include the estimated numbers of bighorn sheep to be transplanted and a description of the areas the proposed transplant or transplants are planned for.

Upon request, the department shall grant one (1) hearing per transplant or relocation if any affected individual or entity expresses written concern within ten (10) days of notification regarding any transplants or relocations of bighorn sheep and shall take into consideration these concerns in approving, modifying or canceling any proposed bighorn sheep transplant or relocation. Any such hearing shall be held within thirty (30) days of the request. It is the policy of the state of Idaho that existing sheep or livestock operations in the area of any bighorn sheep transplant or relocation are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted. Prior to any transplant or relocation of bighorn sheep into areas they do not now inhabit or a transplant or relocation for the purpose of augmenting existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written agreement signed by all federal, state and private entities responsible for the transplant or relocation stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant or relocation are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.

(E) The Idaho department of fish and game: (1) shall develop a state management plan to maintain a viable, self-sustaining population of bighorn sheep in Idaho which shall consider as part of the plan the current federal or state domestic sheep grazing allotment(s) that currently have any bighorn sheep upon or in proximity to the allotment(s); (2) within ninety (90) days of the effective date of this act will cooperatively develop best management practices with the permittee(s) on the allotment(s). Upon commencement of the implementation of best management practices, the director shall certify that the risk of disease transmission, if any, between bighorn and domestic sheep is acceptable

for the viability of the bighorn sheep. The director's certification shall continue for as long as the best management practices are implemented. The director may also certify that the risk of disease transmission, if any, between bighorn and domestic sheep is acceptable for the viability of the bighorn sheep based upon a finding that other factors exist, including but not limited to previous exposure to pathogens that make separation between bighorn and domestic sheep unnecessary.

- 6.(A) The director shall have the power, at any time when it is desired to introduce any new species, or if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise, to close any open season or to reduce the bag limit or possession limit for such species for such time as he may designate; in the event an emergency is declared to exist such closure shall become effective forthwith upon written order of the director; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.
- (B) In order to protect property from damage by wildlife, the fish and game commission may delegate to the director or his designee the authority to declare an open season upon that particular species of wildlife to reduce its population. The director or his designee shall make an order embodying his findings in respect to when, under what circumstances, in which localities, by what means, and in what amounts, numbers and sex the wildlife subject to the hunt may be taken. In the event an emergency is declared to exist such open season shall become effective forthwith upon written order of the director or his designee; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.
- (C) Any season closure order issued under authority hereof shall be published in at least one (1) newspaper of general circulation in the area affected by the order for at least once a week for two (2) consecutive weeks, and such order shall be posted in public places in each county as the director may direct.
- (D) During the closure of any open season or the opening of any special depredation season by the director all provisions of laws relating to the closed season or the special depredation season on such wildlife shall be in force and whoever violates any of the provisions shall be subject to the penalties prescribed therefor.
- (E) Prior to the opening of any special depredation hunt, the director or his designee shall be authorized to provide up to a maximum of fifty percent (50%) of the available permits for such big game to the landholder(s) of privately owned land within the hunt area or his designees. If the landholder(s) chooses to designate hunters, he must provide a written list of the names of designated individuals to the department. If the landholder(s) fails to designate licensed hunters, then the department will issue the total available permits in the manner set by rule. All hunters must have a current hunting license and shall have equal access to both public and private lands within the hunt boundaries. It shall be unlawful for any landholder(s) to receive any form of compensation from a person who obtains or uses a depredation controlled hunt permit.

7. The director shall make an annual report to the governor, the legislature, and the secretary of state, of the doings and conditions of his office, which report shall be made in accordance with section 67-2509, Idaho Code.

8. The director may sell or cause to be sold publications and materials in accordance with section 59-1012, Idaho Code.

9. Any deer, elk, antelope, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game and the department of agriculture. Any moneys expended by the department of fish and game on wildlife disease research shall be mutually agreed upon by the department of fish and game and the department of agriculture.

In addition, a comprehensive animal health program for all deer, elk, antelope, moose, bighorn sheep, or bison imported into, transported, or resident within the state of Idaho shall be implemented after said program is mutually agreed upon by the department of fish and game and the department of agriculture.

10. In order to monitor and evaluate the disease status of wildlife and to protect Idaho's livestock resources, any suspicion by fish and game personnel of a potential communicable disease process in wildlife shall be reported within twenty-four (24) hours to the department of agriculture. All samples collected for disease monitoring or disease evaluation of wildlife shall be submitted to the division of animal industries, department of agriculture.

11.(A) The director is authorized to enter into an agreement with an independent contractor for the purpose of providing a telephone order and credit card payment service for controlled hunt permits, licenses, tags, and permits.

(B) The contractor may collect a fee for its service in an amount to be set by contract.

(C) All moneys collected for the telephone orders of such licenses, tags, and permits shall be and remain the property of the state, and such moneys shall be directly deposited by the contractor into the state treasurer's account in accordance with the provisions of section 59-1014, Idaho Code. The contractor shall furnish a good and sufficient surety bond to the state of Idaho in an amount sufficient to cover the amount of the telephone orders and potential refunds.

(D) The refund of moneys for unsuccessful controlled hunt permit applications and licenses, tags, and permits approved by the department may be made by the contractor crediting the applicant's or licensee's credit card account.

12. The director may define activities or facilities that primarily provide a benefit: to the department; to a person; for personal use; to a commercial enterprise; or for a commercial purpose.

**History.**

I.C., § 36-106, as added by 1976, ch. 95, § 2, p. 315; am. 1983, ch. 59, § 2, p. 136; am. 1984, ch. 154, § 1, p. 368; am. 1987, ch. 211, § 2, p. 444; am. 1988, ch. 260, § 1, p. 504; am. 1989, ch. 284, § 1, p. 695; am. 1990, ch. 9, § 1, p. 15; am. 1990, ch. 10, § 1, p. 18; am. 1993,

ch. 309, § 1, p. 1140; am. 1994, ch. 82, § 2, p. 190; am. 1994, ch. 218, § 4, p. 679; am. 1997, ch. 284, § 1, p. 863; am. 1998, ch. 170, § 3, p. 567; am. 1999, ch. 370, § 22, p. 976; am. 2000, ch. 211, § 2, p. 538; am. 2004, ch. 176, § 1, p. 555; am. 2005, ch. 35, § 1, p. 151; am. 2009, ch. 314, § 1, p. 913.

**STATUTORY NOTES****Cross References.**

County fish hatcheries, §§ 36-1701, 36-1702.

Division of animal industries, § 25-201 et seq.

Enforcement of Fish and Game Law, § 36-1301 et seq.

Fish and game commission may acquire, develop, operate and maintain fish hatcheries and nursery ponds, § 36-104 (b)7.

Licenses, issuance and sale, § 36-301 et seq.

Neglect to account for moneys received under fish and game law, felony, § 36-310.

Possession during closed season, prima facie evidence of unlawful taking, § 36-1305.

State game farms and fish hatcheries, restrictions on employees, § 36-120.

Wildlife preserves, § 36-1901 et seq.

**Amendments.**

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 82, § 2, added subdivisions (e) 11 (A) through (e) 11 (D), inclusive.

The 1994 amendment, by ch. 218, § 4, added subdivision (e) 6 (E).

The 2009 amendment, by ch. 314, rewrote paragraph (e)5(D), added paragraph (e)5(E), and deleted the last paragraph in paragraph (e)9, eliminating the veterinarian position

shared by the department of agriculture and the department of fish and game.

**Compiler's Notes.**

The words "this act", in subdivision (e)1, refer to S.L. 1976, ch. 95, which is compiled as § 22-102A and throughout Title 36. Probably, this reference should be to "this title", being title 36, Idaho Code.

The Idaho fish and game code, referred to at the end of subdivision (e)2, is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as it was enacted by S.L. 1976, ch. 95, § 2.

The phrase "effective date of this act", in subdivision (e)5(E), refers to the effective date of S.L. 2009, ch. 314, which was May 7, 2009.

Section 67-2509, referred to in subdivision (e)7 of this section, was repealed by S.L. 1993, ch. 330, § 1.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 3 of S.L. 1994, ch. 82 declared an emergency. Approved March 10, 1994.

Section 2 of S.L. 1997, ch. 284 declared an emergency. Approved March 24, 1997.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

Section 3 of S.L. 2009, ch. 314 declared an emergency. Approved May 7, 2009.

**36-107. Fish and game account.** — (a) The director shall promptly transmit to the state treasurer all moneys received by him, from the sale of hunting, fishing and trapping licenses, tags and permits or from any other source connected with the administration of the provisions of the Idaho fish and game code or any law or regulation for the protection of wildlife, including moneys received from the sale of predatory animal furs taken under the provisions of this chapter, and the state treasurer shall deposit all such moneys in the fish and game account, which is hereby established, reserved, set aside, appropriated in the state treasury, and made available until expended as may be directed by the commission in carrying out the purposes of the Idaho fish and game code or any law or regulation promulgated for the protection of wildlife, and shall be used for no other purpose. Pending expenditure or use, surplus moneys in the fish and game account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the account. The

state controller shall annually, by August 1 of each year, transfer the sum of one hundred thousand dollars (\$100,000) from the fish and game account to the University of Idaho Caine Veterinary Teaching and Research Center for disease research regarding the interaction of disease between wildlife and domestic livestock. Said moneys shall be expended on projects agreed upon by the University of Idaho Caine Veterinary Teaching and Research Center and the state wildlife veterinarian.

(b) The commission shall govern the financial policies of the department and shall, as provided by law, fix the budget for the operation and maintenance of its work for each fiscal year. Said budget shall not be exceeded by the director.

(c) The sum of two dollars (\$2.00) from each license authorized in sections 36-406(a) and 36-407(b), Idaho Code, which entitle a person to fish, shall be used for the construction, repair, or rehabilitation of state fish hatcheries, fishing lakes, or reservoirs.

(d) The department is authorized to expend up to one dollar and fifty cents (\$1.50) from each resident deer and elk tag sold and five dollars (\$5.00) from each nonresident deer and elk tag sold to fund the department's big game landowner-sportsman's relations program.

#### History.

I.C., § 36-107, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 212, § 1, p. 580; am. 1980, ch. 88, § 1, p. 191; am. 1981, ch. 97, § 3, p. 139; am. 1984, ch. 197, § 1, p. 368; am. 1985, ch. 154, § 1, p. 411; am. 1986, ch. 294, § 2, p. 739; am. 1990, ch. 372, § 2, p. 1023; am. 1990, ch. 388, § 1, p. 1067; am. 1992, ch. 140, § 1, p. 432; am. 1994, ch. 180, § 56, p. 420.

#### STATUTORY NOTES

##### Cross References.

Deposits of license receipts with state treasurer, § 36-307.

Expenses of commissioners to be paid from fish and game account, § 36-102.

Fees of special counsel of department to be paid from fish and game account, § 36-121.

Sale of confiscated game, proceeds to be paid into fish and game account, § 36-1304.

Traps and trapping equipment, proceeds of sale after seizure converted into fish and game account, § 36-1103.

Wildlife restoration projects, § 36-1801 et seq.

##### Compiler's Notes.

The Idaho fish and game code, referred to in this section, is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as it was enacted by S.L. 1976, ch. 95, § 2.

The position of state wildlife veterinarian, referred to at the end of subsection (a), was eliminated by S.L. 2009, ch. 314, § 1.

For additional information on the Caine Veterinary Teaching Center, see <http://www.cainecenter.uidaho.edu>.

##### Effective Dates.

Section 3 of S.L. 1984, ch. 197 declared an emergency and made the act effective May 1, 1984. Approved April 3, 1984.

Section 3 of S.L. 1986, ch. 294 provided that the act should take effect on and after January 1, 1987.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 56 of S.L. 1994, ch. 180 became effective January 2, 1995.

**JUDICIAL DECISIONS****DECISIONS UNDER PRIOR LAW****Purpose of Section.**

This section provides that the moneys in the state fish and game fund are thereby appropriated for the purpose of defraying the expenses, debts, and costs incurred in carry-

ing out the provisions, objects and purposes of the chapter of which it is a part, and for no other purposes whatsoever. *Herrick v. Gallet*, 35 Idaho 13, 204 P. 477 (1922).

**36-108. Fish and game expendable trust account.** — The director may receive on behalf of the department any money or real or personal property donated, bequeathed, devised, or conditionally granted to the department. Such moneys received directly or derived from the sale of such property shall be deposited in an account in the agency asset fund to be known as the fish and game expendable trust account, which is hereby established. Moneys in the account may be appropriated to carry out the terms or conditions of such donation, bequest, devise, or grant, or in the absence of such terms or conditions, may be appropriated to the commission to expend, use, and administer such funds as advisable in the public interest and in accordance with the policies set forth in the Idaho fish and game code, and shall be used for no other purpose.

Pending such expenditure or use, surplus moneys in the fish and game expendable trust account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the fish and game expendable trust account.

**History.**

I.C., § 36-108, as added by 1990, ch. 388,  
§ 4, p. 1067.

**STATUTORY NOTES****Compiler's Notes.**

Former § 36-108 was amended and redesignated as § 36-120 by § 2 of S.L. 1990, ch. 388.

The Idaho fish and game code, referred to

near the end of the first paragraph, is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as it was enacted by S.L. 1976, ch. 95, § 2.

**36-109. Fish and game nonexpendable trust account.** — The director may receive on behalf of the department any money or real or personal property donated, bequeathed, devised, or conditionally granted to the department. Such moneys received directly or derived from the sale of such property shall be deposited in an account in the agency asset fund to be known as the fish and game nonexpendable trust account, which is hereby established. The principal amount of moneys in the account are not subject to appropriation. Interest earned on investment of moneys in the account are subject to appropriation to carry out the terms or conditions of such donation, bequest, devise, or grant, and shall be used for no other purpose.

Moneys in the account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury

by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the fish and game nonexpendable trust account.

**History.**

I.C., § 36-109, as added by 1990, ch. 388,  
§ 5, p. 1067.

**STATUTORY NOTES****Compiler's Notes.**

Former § 36-109 was amended and redes-

gnated as § 36-121 by § 3 of S.L. 1990, ch. 388.

**36-110. Fish and game federal account.** — All moneys received from the federal government for the administration of any aspect of the fish and game laws of this state shall be deposited in the fish and game federal account, which is hereby established in such fund as the state controller directs.

Moneys in the fish and game federal account are subject to appropriation, and the provisions of section 67-3516, Idaho Code. Moneys in the account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury by section 67-1210, Idaho Code, if not prohibited or limited by the terms of applicable federal law or rule. Interest earned on all such investments shall be paid into the fish and game federal account.

**History.**

I.C., § 36-110, as added by 1990, ch. 388,  
§ 6, p. 1067; am. 1994, ch. 180, § 57, p. 420.

**STATUTORY NOTES****Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the

state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 57 of S.L. 1994, ch. 180 became effective January 2, 1995.

**36-111. Fish and game set-aside account.** — (1) There is hereby established the fish and game set-aside account in the dedicated fund. The account shall have paid into it moneys as follows:

(a) Four dollars (\$4.00) of each steelhead trout or anadromous salmon permit sold. Moneys from this source shall be used for the acquisition, development and maintenance of parking areas, access sites, boat ramps and sanitation facilities in salmon and steelhead fishing areas, for management of and research on steelhead trout and anadromous salmon problems, and for technical assistance with litigation concerning steelhead and anadromous salmon originating in Idaho.

(b) Two dollars (\$2.00) from each combination hunting and fishing license, or each hunting license sold, as provided in sections 36-406 and 36-407, Idaho Code, except that class 4 licenses shall be exempt from this provision. Moneys from this source shall be used for the purposes of acquiring access to and acquiring and rehabilitating big game ranges and

upland bird and waterfowl habitats. Unless it is inconsistent with the goals of the commission, it is the intent of the legislature that the commission negotiate lease arrangements as compared with outright purchase of private property.

(c) One dollar and fifty cents (\$1.50) from each antelope, elk and deer tag sold as provided in section 36-409, Idaho Code. Not less than seventy-five cents (75¢) of each one dollar and fifty cents (\$1.50) collected shall be placed in a separate account to be designated as a feeding account. Moneys in this account shall be used exclusively for the purposes of winter feeding of and rehabilitation of winter range for antelope, elk and deer. The balance of moneys realized from this source may be used for the control of depredation of private property by antelope, elk and deer and control of predators affecting antelope, elk and deer. Moneys in the feeding account shall not be used for any purpose other than winter feeding as herein specified until the total funds in the account, including any interest earnings thereon, equal or exceed four hundred thousand dollars (\$400,000). Moneys in the feeding account may not be expended except upon the declaration of a feeding emergency by the director of the department of fish and game. Such emergency need not exist on a statewide basis but can be declared with respect to one (1) or more regions of the state. The department shall by rule establish the criteria for a feeding emergency.

(d) Those amounts designated by individuals in accordance with section 63-3067A(3)(a), Idaho Code, and from fees paid under the provisions of section 49-417, Idaho Code. Moneys from these sources shall be used for a nongame management and protection program under the direction of the fish and game commission.

(e) Money derived from the assessment of processing fees. Moneys derived from this source shall be used as provided in section 36-1407, Idaho Code.

(2) Moneys in the fish and game set-aside account and the feeding account established in subsection (1)(c) of this section are subject to appropriation, and the provisions of section 67-3516, Idaho Code. Moneys in the fish and game set-aside account and the feeding account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury by section 67-1210, Idaho Code, with interest earned on investments from each account to be paid into that account.

#### History.

I.C., § 36-111, as added by 1990, ch. 388, § 7, p. 1067; am. 1992, ch. 190, § 2, p. 593; am. 1994, ch. 149, § 2, p. 342; am. 1994, ch. 269, § 1, p. 832; am. 2000, ch. 211, § 4, p. 538; am. 2008, ch. 218, § 1, p. 675.

#### STATUTORY NOTES

##### Amendments.

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 149, § 2, added subdivision (1) (g).

The 1994 amendment, by ch. 269, § 1, in subdivision (1) (c) added the present second sentence, divided the former second sentence into the present third and fourth sentences and in the present third sentence substituted "Moneys in this account shall be used

exclusively" for "Moneys from this source shall be used" and inserted "and rehabilitation of winter range for"; in the present fourth sentence, added "The balance of moneys realized from this source may be used for the" to the beginning of the sentence, substituted "and" for a comma preceding "control of predators affecting" and deleted ", and rehabilitation of winter range for antelope, elk and deer" from the end of the sentence; and added the present fifth, sixth, and seventh sentences; in subsection (2) inserted "and the feeding account established in subsection (1)(c) of this section" in the first sentence, in the second sentence inserted "fish and game set-aside account and the feeding" and at the end of the subsection substituted "Code, with in-

terest earned on investments from each account to be paid into that account" for "Code. Interest earned on all such investments shall be paid into the fish and game set aside account."

The 2008 amendment, by ch. 218, updated the first section reference in subsection (1)(d) in light of the 2007 amendment of § 63-3067A.

#### **Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-112. Animal damage control fund.** — The animal damage control fund is hereby established in the state treasury. Moneys in the fund are subject to appropriation to the state animal damage control board established by section 25-2612A, Idaho Code, for the control of predatory animals and birds. In addition to moneys transferred into the fund pursuant to section 36-115(c), Idaho Code, the state controller shall annually, by August 1 of each year, transfer the sum of one hundred thousand dollars (\$100,000) from the fish and game fund [account] to the animal damage control fund. The state animal damage control board in using these moneys shall follow fish and game commission direction on actions regarding predatory animals or birds forwarded by the department by the same date.

#### **History.**

I.C., § 36-112, as added by 1990, ch. 388, § 8, p. 1067; am. 1994, ch. 180, § 58, p. 420;

am. 1997, ch. 285, § 4, p. 867; am. 1997, ch. 288, § 1, p. 875; am. 2006, ch. 230, § 1, p. 687.

#### **STATUTORY NOTES**

#### **Amendments.**

The 2006 amendment, by ch. 230, in the section heading and throughout the section, substituted "fund" for "account"; updated the section reference in the first sentence; in the second sentence, added "In addition to monies transferred into the fund pursuant to section 36-115(c), Idaho Code," and substituted "one hundred thousand dollars" for "fifty thousand dollars"; and deleted former subsection (2), which pertained to the state controller's annual transfer of an additional fifty thousand dollars from the fish and game account to the animal damage control account and rules governing its usage.

#### **Compiler's Notes.**

The bracketed insertion in the third sentence was added by the compiler to correct the name of the referenced account. See § 36-107.

#### **Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 58 of S.L. 1994, ch. 180 became effective January 2, 1995.

**36-113. Electrofishing permits — Water quality data.** — The department of fish and game shall enter into an agreement with the director to grant necessary permits and licenses for electrofishing needed to accomplish water quality monitoring pursuant to chapter 36, title 39, Idaho Code. Additionally, the department of fish and game shall provide as requested by basin advisory groups created pursuant to chapter 36, title 39, Idaho Code,

any information regarding the presence or absence of aquatic species listed as "threatened," "endangered" or "candidate" pursuant to the federal endangered species act, together with any special water quality requirements necessary to the recovery or maintenance of those individual species.

**History.**

I.C., § 36-113, as added by 1995, ch. 352,  
§ 6, p. 1165.

**STATUTORY NOTES**

**Cross References.**

Basin advisory groups, §§ 39-3613 and 39-3614.

ferred to in this section, is compiled as 16 U.S.C.S. § 1531 et seq.

**Federal References.**

The federal endangered species act, re-

**36-114. Big game primary depredation account. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised I.C., § 36-114, as added by 1990, ch. 370, § 2, p. 1007; am. 1994, ch. 180, § 59, p. 420; am. 1994, ch.

218, § 6, p. 679; am. 2001, ch. 172, § 1, p. 588; am. 2004, ch. 189, § 1, p. 588, was repealed by S.L. 2005, ch. 403, § 1. See § 36-115.

**36-115. Nonexpendable big game depredation fund — Expendable big game depredation fund.** — (a) The nonexpendable big game depredation fund is hereby established in the state treasury. On July 1, 2005, the state controller shall transfer two million two hundred fifty thousand dollars (\$2,250,000) from the big game secondary depredation account, created pursuant to section 3, chapter 370, laws of 1990, to the nonexpendable big game depredation fund. Moneys in the fund shall be invested as provided in section 67-1210, Idaho Code, and interest earned on investment of idle moneys in the fund shall be paid to the expendable big game depredation fund. The principal amount in the fund shall not be appropriated, but only the interest earned on investment of the moneys in the fund shall be available for appropriation to the expendable big game depredation fund.

(b) The big game secondary depredation account was created in the state treasury pursuant to section 3, chapter 370, laws of 1990, and shall, from the date of enactment of this act, be known and referred to as the expendable big game depredation fund. In addition to payments to the fund from the nonexpendable big game depredation fund as provided for in subsection (a) of this section, the state controller shall annually, as soon after July 1 of each year as practical, transfer into the fund two hundred thousand dollars (\$200,000) from the fish and game account. Moneys in the fund are subject to appropriation for the purposes recited in section 36-122, Idaho Code, section 36-1108(a)3., Idaho Code, section 36-1108(b), Idaho Code, section 36-1109 and section 36-1110, Idaho Code. Moneys in the fund shall be invested as provided in section 67-1210, Idaho Code, and interest earned on investment of idle moneys in the fund shall be paid to the fund.

The expendable big game depredation fund shall be under the administrative direction of the state controller.

(c) The state controller shall annually report to the legislature, the division of financial management, the director of the department of agriculture and the director of the department of fish and game the amount of interest earnings and the availability of moneys in the expendable big game depredation fund for appropriation. At the close of each fiscal year, any unexpended and unencumbered balance that exceeds seven hundred fifty thousand dollars (\$750,000), shall be transferred as follows: one hundred thousand dollars (\$100,000) to the fish and game set-aside account to be earmarked for sportsmen access programs with the remaining amount transferred to the animal damage control account established pursuant to section 36-112, Idaho Code. Transferred funds shall be spent pursuant to the respective appropriations for the set-aside account and the animal damage control account.

(d) Any payment for damages pursuant to section 36-1108(b), Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-half (1/2) of the amount of the approved claim that is to be paid from the expendable big game depredation fund to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the expendable big game depredation fund.

(B) The balance of all unpaid approved claim amounts, including claims submitted under the provisions of sections 36-1109 and 36-1110, Idaho Code, shall be accumulated to a total as of June 30. If the balance in the expendable big game depredation fund appropriation is sufficient to pay the balance of all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant.

(C) The director shall encumber the balance of moneys appropriated from the expendable big game depredation fund, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars (\$1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from the expendable big game depredation fund, but the owner or lessee is required to absorb only a single one thousand dollar (\$1,000) deductible per claim.

(B) Provided however, that for claims in subsequent years for damage to standing or stored crops in the same location as the first occurrence, the one thousand dollar (\$1,000) deductible will be waived if the department failed to prevent property loss following the first occurrence.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(e) Any claim for damages pursuant to section 36-1109, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order that not more than one-half (1/2) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within the estimated total claims liability for that fiscal year from the expendable big game depredation fund.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the expendable big game depredation fund appropriation is sufficient to pay all approved claims, the director shall promptly pay them. If the balance is not sufficient to pay the balance of all approved claims, the director shall pay a proportionate share to each claimant.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following condition applies: the amount of one thousand dollars (\$1,000) must be deducted from each such statement. Provided however, if an owner or caretaker suffers damage to or destruction of livestock in more than one (1) occurrence during the fiscal year, then only one (1) deductible must be subtracted from the claims and the deductible on subsequent claims will be waived. This deductible is a net loss to the owner or caretaker, and will not be compensated for from the expendable big game depredation fund.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

(f) Any claim for damages to forage pursuant to section 36-1110, Idaho Code, is limited by the following conditions and requirements:

1. The full amount of any approved claim will not be paid at the time of approval, but shall be subject to the following conditions and requirements:

(A) The director of the department of fish and game may order not more than one-half (1/2) of the amount of the approved claim to be paid immediately, if, in the judgment of the director, such payment is within

the estimated total claims liability for that fiscal year from the expendable big game depredation fund.

(B) The balance of all unpaid approved claim amounts shall be accumulated to a total as of June 30. If the balance in the expendable big game depredation fund appropriation is sufficient to pay all approved claims, the director shall pay them. If the balance is not sufficient to pay all approved claims, the director shall authorize a proportionate amount to be paid to each claimant.

(C) The director shall encumber the balance of the appropriation, or moneys sufficient to pay the approved claims, whichever is the lesser.

2. Each claimant must submit a statement of total damages sustained per occurrence. For each such statement, the following conditions and requirements apply:

(A) The amount of one thousand dollars (\$1,000) must be deducted from each such statement. This deductible is a net loss to the owner or lessee, and will not be compensated for from the expendable big game depredation fund.

(B) The total amount of all claims for damages to forage that may be paid from the expendable big game depredation fund shall not exceed twenty-five percent (25%) of the amount of interest earned from investments of moneys in that fund in any one (1) fiscal year.

3. Each approved claim must contain a certification by the director of the department of fish and game, or his designee, that:

(A) All statutory requirements leading up to approval for payment have been met.

(B) The claimant has certified that he will accept the amount approved as payment in full for the claim submitted, subject to the conditions and requirements of this subsection.

#### History.

I.C., § 36-115, as added by 1990, ch. 370, § 3, p. 1007; am. 1994, ch. 180, § 60, p. 420; am. 1994, ch. 218, § 7, p. 679; am. 1996, ch.

369, § 1, p. 1241; am. 1997, ch. 231, § 1, p. 672; am. 2001, ch. 172, § 2, p. 588; am. 2004, ch. 189, § 2, p. 588; am. 2005, ch. 403, § 2, p. 1369; am. 2009, ch. 217, § 1, p. 677.

#### STATUTORY NOTES

##### Cross References.

Director of department of fish and game, § 36-106.

Fish and game account, § 39-107.

Fish and game set-aside account, § 36-111.

State controller, § 67-1001 et seq.

##### Amendments.

The 2009 amendment, by ch. 217, in subsections (d)1, (e)1(B), and (f)1(B), deleted the former last sentence, which read: "However, claims filed under section 36-1108, Idaho Code, shall have priority and will be paid prior to claims filed under sections 36-1109 and 36-1110, Idaho Code."

##### Compiler's Notes.

The phrase "the date of enactment of this act", in subsection (b), refers to the effective

date of S.L. 2005, ch. 403, which was July 1, 2005.

Section 5 of S.L. 2005, ch. 403 provides: "All remaining moneys which have been appropriated to and been encumbered in relation to the Big Game Primary Depredation Account, created pursuant to Section 2, Chapter 370, Laws of 1990, as of July 1, 2005, shall be transferred to the Expendable Big Game Depredation Fund as set forth pursuant to the provisions of Section 36-115, Idaho Code. Any outstanding claims against the Big Game Primary Depredation Account as of July 1, 2005, shall be processed pursuant to the provisions of Section 36-115, Idaho Code."

##### Effective Dates.

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and

after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such amendment was adopted, the amendment to this section by § 60 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 2 of S.L. 1997, ch. 231 declared an emergency and provided that the act should be in full force and effect on and after its passage and approval retroactive to July 1, 1996. Approved March 20, 1997.

Section 3 of S.L. 2001, ch. 172 declared an emergency retroactively to July 1, 2000 and approved March 23, 2001.

**36-116. Wolves — Solicitation for transfer.** — Within thirty (30) days from the effective date of this act, the Idaho department of fish and game shall contact, in writing, all state agencies within the United States with comparable powers and duties as those vested in the department, soliciting interest in the transfer of wolves from Idaho to such agency. In the event an agency of another state requests such transfer, it shall pay to the state of Idaho an amount as determined by the department to cover costs associated with capture, transportation and any other associated administrative expenses.

**History.**

I.C., § 36-116, as added by 2009, ch. 186, § 1, p. 608.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase "the effective date of this act"

refers to the effective date of S.L. 2009, ch. 186, which was April 17, 2009.

**36-117 — 36-119. [Reserved.]**

**36-120. State game farms and fish hatcheries — Restrictions on employees.** — All classified personnel employed at state game farms and state fish hatcheries shall devote their entire time to the duties of their office, and shall not engage in any manner whatever in the operation of any fish hatchery or game farm, public or private, unless so ordered by the director and they shall not be entitled to have any holding in or own any private fish ponds, lakes or streams of this state, nor shall they engage in the selling or disposal of any wildlife whatever, except in the duties of their office and as directed by said director.

**History.**

I.C., § 36-108, as added by 1976, ch. 95,

§ 2, p. 315; am. and redesig. 1990, ch. 388, § 2, p. 1067.

**STATUTORY NOTES**

**Compiler's Notes.**

This section was formerly compiled as § 36-108.

**36-121. Special counsel for department.** — The director, with the approval of the governor, is hereby authorized to employ special counsel for the department of fish and game, and to pay reasonable attorneys' fees and expenses of such counsel incurred in the conduct of business of the

department of fish and game, or prosecution of violations thereof civilly or criminally, and such fees and expenses shall be a proper charge against the fish and game fund [account].

**History.**

I.C., § 36-109, as added by 1976, ch. 95, § 3, p. 1067.

§ 2, p. 315; am. and redesign. 1990, ch. 388, § 3, p. 1067.

**STATUTORY NOTES****Cross References.**

Fish and game account, § 36-109.

**Compiler's Notes.**

This section was formerly compiled as § 36-109.

The bracketed insertion at the end of the section was added by the compiler to correct the name of the referenced account. See § 36-107.

Section 3 of S.L. 1976, ch. 95 read: "The

provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.**

Section 5 of S.L. 1976, ch. 95 provided that the act should be in full force and effect on and after January 1, 1977.

**36-122. Advisory committee.** — (a) There is hereby created the fish and game advisory committee. The committee shall consist of twelve (12) members. Six (6) members of the committee shall be appointed by the director of the department of fish and game to generally represent wildlife interests. Six (6) members of the committee shall be appointed by the director of the department of agriculture to generally represent agricultural interests. At the beginning of each odd-numbered year, the director of the department of agriculture shall appoint a chairman from among his appointees, and the director of the department of fish and game shall appoint a vice-chairman from among his appointees. At the beginning of each even-numbered year, the director of the department of fish and game shall appoint a chairman from among his appointees, and the director of the department of agriculture shall appoint a vice-chairman from among his appointees. The committee shall meet at such times as appropriate, but not less frequently than annually.

(b) All members shall be appointed to serve three (3) year terms. Appointments to fill vacancies shall be for the balance of the unexpired term. All members shall be appointed by and serve at the pleasure of the respective directors of the department of agriculture or the department of fish and game. Members shall be compensated as provided in section 59-509(b), Idaho Code, and such expenses shall be paid from the expendable big game depredation fund.

(c) The department of fish and game shall provide staff assistance and support for the committee.

(d) The committee shall have the authority to:

1. Act as a liaison between the commission, landowners, the department of agriculture, the department of fish and game, and wildlife, outdoor recreation and sportsmen's organizations;
2. Act as an independent resource to give advice and recommendations on administration of the programs authorized in sections 36-1108 and 36-1109, Idaho Code.

**History.**

I.C., § 36-122, as added by 1990, ch. 370, § 1, p. 1007; am. 1994, ch. 113, § 1, p. 260; am. 1998, ch. 178, § 1, p. 664; am. 2005, ch. 403, § 3, p. 1369.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101. Expendable big game depredation fund, § 36-115.

Director of department of fish and game, § 36-106.

**36-123. Winter feeding advisory committees.** — (1) A winter feeding advisory committee shall be established for each district where winter feeding of antelope, elk, and deer normally occurs. Each committee shall consist of five (5) members. The members shall be appointed and removed for cause by unanimous vote of the Idaho fish and game commission. It is intended that the committees reflect the cross section of the major interest groups associated with each district. Each committee shall meet at such times as appropriate, but not less frequently than annually, on or before December 1, before the winter feeding season arrives, whichever is earlier.

(2) The term of office of a member shall be two (2) years, except a portion of the initial appointments may be for a term of one (1) year to provide staggered terms. Appointments to fill vacancies shall be for the balance of the unexpired term. The committees shall serve without compensation.

(3) Each winter feeding advisory committee established pursuant to subsection (1) of this section shall appoint a chairman. The chairmen of the committees shall meet at least annually to coordinate activities and promote consensus on issues of common interest among the winter feeding advisory committees. The chairmen may elect a leader from among the chairmen to call meetings and conduct and coordinate activities of the group.

(4) The department of fish and game shall provide staff assistance and support for the committees.

(5) The committees shall have the authority to:

(a) Act as an independent resource in each district to give advice and recommendations on the administration of winter feeding programs;

(b) Act as a liaison between the commission, the department, interest groups, and the public on winter feeding issues.

**History.**

I.C., § 36-123, as added by 1994, ch. 183, § 1, p. 601; am. 1999, ch. 172, § 1, p. 462; am.

2008, ch. 72, § 1, p. 191.

**STATUTORY NOTES****Amendments.**

The 2008 amendment, by ch. 72, in subsection (1), deleted the former fourth sentence,

which read: "The regional wildlife councils will provide a list of appointees."

**36-124. Reciprocal licensure agreements with Indian tribes.** — The commission is authorized to enter into a reciprocal licensure agreement with any federally recognized Indian tribe that possesses a reservation within this state. Pursuant to such a reciprocal licensure agreement, the

commission may recognize licenses or permits issued by the tribe for the hunting, angling or trapping of wildlife as satisfying license or permit requirements imposed by the commission on such activities and the tribe may recognize licenses or permits issued by the commission for the hunting, angling or trapping of wildlife as satisfying license or permit requirements imposed by the tribe on such activities.

**History.**

I.C., § 36-124, as added by 2003, ch. 154,  
§ 1, p. 441.

## CHAPTER 2

### CLASSIFICATIONS AND DEFINITIONS

**SECTION.**

36-201. Fish and game commission authorized to classify wildlife.

**SECTION.**

36-202. Definitions.

**36-201. Fish and game commission authorized to classify wildlife.** — With the exception of predatory animals, the Idaho fish and game commission is hereby authorized to define by classification or reclassification all wildlife in the state of Idaho. Such definitions and classifications shall include:

- (a) Game animals
- (b) Game birds
- (c) Game fish
- (d) Fur-bearing animals
- (e) Migratory birds
- (f) Threatened or endangered wildlife
- (g) Protected nongame species
- (h) Unprotected wildlife

Predatory wildlife shall include:

1. Coyote
2. Jackrabbit
3. Skunk
4. Weasel
5. Starling
6. Raccoon

Notwithstanding the classification assigned to wolves, all methods of take including, but not limited to, all methods utilized by the United States fish and wildlife service and the United States department of agriculture wildlife services, shall be authorized for the management of wolves in accordance with existing laws or approved management plans.

**History.**

I.C., § 36-201, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 75, § 1, p. 154; am. 2005, ch. 179, § 1, p. 552; am. 2010, ch. 82, § 1, p. 161.

## STATUTORY NOTES

**Prior Laws.**

Former title 36, chapter 2, comprised of §§ 36-201 to 36-213, was repealed by S.L. 1976, ch. 95, § 1.

**Amendments.**

The 2010 amendment, by ch. 82, added "6. Raccoon."

**36-202. Definitions.** — Whenever the following words appear in title 36, Idaho Code, and orders and rules promulgated by the Idaho fish and game commission or the director of the Idaho department of fish and game, they shall be deemed to have the same meaning and terms of reference as hereinafter set forth. The present tense includes the past and future tenses, and the future, the present.

(a) "Title" means all of the fish and game laws and rules promulgated pursuant thereto.

(b) "Commission" means the Idaho fish and game commission. "Commissioner" means a member of the Idaho fish and game commission.

(c) "Department" means the Idaho department of fish and game.

(d) "Director" means the director of the Idaho department of fish and game or any person authorized to act in his name.

(e) "Employee" means any employee of the Idaho department of fish and game whose salary is paid entirely or in part by funds administered by the Idaho fish and game commission and whose appointment is made in accordance with chapter 53, title 67, Idaho Code, and related rules.

(f) "Person" means an individual, partnership, corporation, company, or any other type of association, and any agent or officer of any partnership, corporation, company, or other type of association. The masculine gender includes the feminine and the neuter. The singular, the plural, and the plural, the singular.

(g) "Wildlife" means any form of animal life, native or exotic, generally living in a state of nature provided that domestic cervidae as defined in section 25-3701, Idaho Code, shall not be classified as wildlife.

(h) "Trophy big game animal" means any big game animal deemed a trophy as defined in this subsection (h)1. through 8. For the purpose of this section, a score shall be determined from the antlers of the mule deer, white-tailed deer or elk as measured by the copyrighted Boone and Crockett scoring system. The highest of the typical or nontypical scores shall be used for determining the total score.

1. Mule deer: any buck scoring over one hundred fifty (150) points;
  2. White-tailed deer: any buck scoring over one hundred thirty (130) points;
  3. Elk: any bull scoring over three hundred (300) points;
  4. Bighorn sheep: any ram;
  5. Moose: any bull;
  6. Mountain goat: any male or female;
  7. Pronghorn antelope: any buck with at least one (1) horn exceeding fourteen (14) inches;
  8. Caribou: any male or female.
- (i) "Take" means hunt, pursue, catch, capture, shoot, fish, seine, trap, kill, or possess or any attempt to so do.

(j) "Hunting" means chasing, driving, flushing, attracting, pursuing, worrying, following after or on the trail of, shooting at, stalking, or lying in wait for, any wildlife whether or not such wildlife is then or subsequently captured, killed, taken, or wounded. Such term does not include stalking, attracting, searching for, or lying in wait for, any wildlife by an unarmed person solely for the purpose of watching wildlife or taking pictures thereof.

(k) "Fishing" means any effort made to take, kill, injure, capture, or catch any fish or bullfrog.

(l) "Trapping" means taking, killing, and capturing wildlife by the use of any trap, snare, deadfall, or other device commonly used to capture wildlife, and the shooting or killing of wildlife lawfully trapped, and includes all lesser acts such as placing, setting or staking such traps, snares, deadfalls, and other devices, whether or not such acts result in the taking of wildlife, and every attempt to take and every act of assistance to any other person in taking or attempting to take wildlife with traps, snares, deadfalls, or other devices.

(m) "Possession" means both actual and constructive possession, and any control of the object or objects referred to; provided that wildlife taken accidentally and in a manner not contrary to the provisions of this title shall not be deemed to be in possession while being immediately released live back to the wild.

(n) "Possession limit" means the maximum limit in number or amount of wildlife which may be lawfully in the possession of any person. "Possession limit" shall apply to wildlife being in possession while in the field or being transported to final place of consumption or storage.

(o) "Bag limit" means the maximum number of wildlife which may be legally taken, caught, or killed by any one (1) person for any particular period of time, as provided by order of the commission. The term "bag limit" shall be construed to mean an individual, independent effort and shall not be interpreted in any manner as to allow one (1) individual to take more than his "bag limit" toward filling the "bag limit" of another.

(p) "Buy" means to purchase, barter, exchange, or trade and includes any offer or attempt to purchase, barter, exchange, or trade.

(q) "Sell" means to offer or possess for sale, barter, exchange, or trade, or the act of selling, bartering, exchanging or trading.

(r) "Transport" means to carry or convey or cause to be carried or conveyed from one (1) place to another and includes an offer to transport, or receipt or possession for transportation.

(s) "Resident" means any person who has been domiciled in this state, with a bona fide intent to make this his place of permanent abode, for a period of not less than six (6) months immediately preceding the date of application for any license, tag, or permit required under the provisions of this title or orders of the commission and who, when temporarily absent from this state, continues residency with intent to return, and who does not claim any resident privileges in any other state or country for any purpose. Such privileges include, but are not limited to: state where valid driver's license is issued; state of voter registration; state where resident state income taxes are filed; state where homeowner's tax exemption is granted. Provided that, until any such person has been continuously domiciled

outside the state of Idaho for a sufficient period of time to qualify for resident hunting and fishing privileges in his new state of residence, said person shall be deemed not to have lost his residency in Idaho for the purposes of this title. However, mere ownership of real property or payment of property taxes in Idaho does not establish residency. Provided further that:

1. Idaho residents shall not lose their residency in Idaho if they are absent from the state for religious (not to exceed two (2) years) or full-time educational (not to exceed five (5) years) purposes, full-time to be defined by the educational institution attended, and do not claim residency or use resident privileges in any other state or country for any purpose.
  2. Idaho residents who are in the military service of the United States and maintain Idaho as their official state of residence as shown on their current leave and earnings statement, together with their spouse and children under eighteen (18) years of age living in the household, shall be eligible for the purchase of resident licenses.
  3. A member of the military service of the United States or of a foreign country, together with his spouse and children under eighteen (18) years of age residing in his household, who have been officially transferred, stationed, domiciled and on active duty in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such assignment continues, to purchase a resident license. A member of the state national guard or air national guard, domiciled in this state for a period of thirty (30) days last preceding application shall be eligible, as long as such residency continues, to purchase a resident license.
  4. Any person enrolled as a corpsman at a job corps center in Idaho shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.
  5. Any foreign exchange student enrolled in an Idaho high school shall be eligible, as long as he is so enrolled, to obtain a resident fishing license irrespective of his length of residence in this state.
- (t) "Senior resident" means any person who is over sixty-five (65) years of age and who has been a resident of the state of Idaho as hereinbefore provided for not less than five (5) years.
- (u) "Nonresident" means any person who does not qualify as a resident.
- (v) "Order, rule, regulation and proclamation" are all used interchangeably and each includes the others.
- (w) "Blindness" means sight that does not exceed 20/200 as provided by the administrative guidelines of section 56-213, Idaho Code.
- (x) "Public highway" means the traveled portion of, and the shoulders on each side of, any road maintained by any governmental entity for public travel, and includes all bridges, culverts, overpasses, fills, and other structures within the limits of the right-of-way of any such road.
- (y) "Motorized vehicle" means any water, land or air vehicle propelled by means of steam, petroleum products, electricity, or any other mechanical power.
- (z) "Commercial fish hatchery" means any hatchery, pond, lake or stream or any other waters where fish are held, raised, or produced for sale but shall not include facilities used for the propagation of fish commonly considered as ornamental or aquarium varieties.

- (aa) "License" means any license, tag, permit or stamp.
- (bb) "License vendor" means any person authorized to issue or sell licenses.
- (cc) "Proclamation" means the action by the commission and publication of the pertinent information as it relates to the seasons and limits for taking wildlife.

#### **History.**

I.C., § 36-202, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 110, § 1, p. 238; am. 1978, ch. 92, § 1, p. 171; am. 1986, ch. 49, § 1, p. 141; am. 1986, ch. 51, § 1, p. 145; am. 1989, ch. 260, § 1, p. 636; am. 1994, ch. 26, § 1, p. 41; am. 1995, ch. 64, § 2, p. 158; am. 1995, ch.

287, § 1, p. 951; am. 1996, ch. 55, § 1, p. 164; am. 1998, ch. 170, § 4, p. 567; am. 1998, ch. 175, § 1, p. 615; am. 1998, ch. 212, § 1, p. 739; am. 1999, ch. 173, § 1, p. 463; am. 1999, ch. 370, § 23, p. 976; am. 2010, ch. 53, § 1, p. 100.

#### **STATUTORY NOTES**

#### **Amendments.**

This section was amended by three 1998 acts — ch. 170, § 4, effective July 1, 1998, ch. 175, § 1, effective July 1, 1998, and ch. 212, § 1, effective July 1, 1998 — which do not conflict and have been compiled together. However, two of the acts — ch. 170 and ch. 175 — added and redesignated subsections differently. The compiler has attempted to resolve these differences by letting stand the addition of a new subsection (h) by ch. 175 and the accompanying redesignations of former subsections (h) through (aa) as present subsections (i) through (bb) while redesignating the addition of new subsection (bb) by ch. 170 as subsection [(cc)].

The 1998 amendment, by ch. 170, § 1, inserted "(1)" following the word "one" in subsections (n) and (q); added "and proclamation" following "Order, rule, regulation" in the first sentence of subsection (u); and added subsection (bb).

The 1998 amendment, by ch. 175, § 1, added present subsections (h), (h)1. through (h)8., and (i); redesignated former subsections (i) through (aa) as present subsections (j) through (bb); and added "(1)" following "one" in present subsection (o).

The 1998 amendment, by ch. 212, § 1, substituted "means" for "shall" throughout this section; inserted "(1)" following the word "one" in subsections (n) and (q); added the last sentence in subdivision (r)3; and substituted "includes" for "shall" in subsection (w).

This section was amended by two 1999 acts which appear to be compatible and have been compiled together.

The 1999 amendment, by ch. 173, in subdivision (g), added "provided that domestic cervidae as defined in section 25-3701, Idaho Code, shall not be classified as wildlife" following "state of nature"; redesignated former subdivision (bb) as present subdivision (cc), in present subdivision (cc), substituted "means the action" for "shall mean the action."

The 1999 amendment, by ch. 370, in subdivision (e), substituted "chapter 53, title 67, Idaho Code" for "the Idaho personnel commission act" and redesignated former subdivision (bb) as present subdivision (cc).

The 2010 amendment, by ch. 53, in the first sentence of subsection (h), substituted "as defined in this subsection (h)1. through 8" for "as per Boone and Crockett standards"; in the second sentence of subsection (h), added "a score shall be determined from the antlers of the mule deer, white-tailed deer or elk as measured by the copyrighted Boone and Crockett scoring system"; in the last sentence of subsection (h), substituted "for determining the total score" for "described as follows".

#### **Compiler's Notes.**

For Boone and Crockett scoring system, referred to in the introductory paragraph in subsection (h), see:

<http://www.boone-crockett.org/bgreCORDS/scoringyourtrophy.asp?area=bgreCORDS>.

The words enclosed in parentheses so appeared in the law as enacted.

#### **Effective Dates.**

Section 16 of S.L. 1995, ch. 287 read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval. Section 1 of this act shall be in full force and effect on and after July 1, 1995. Additionally, the Fish and Game Commission is authorized to declare such other sections of this act in full force and effect as is necessary to effect an orderly implementation of the computerized licensing system as soon after July 1, 1995, as possible and the Fish and Game Commission files notification with the Secretary of State of adoption of a motion authorizing such action."

Approved March 21, 1995.

## JUDICIAL DECISIONS

## ANALYSIS

**Hunting.**

No improper delegation.  
Not unconstitutionally vague.  
Resident.

**Hunting.**

Subsection (i) [now (j)] of this section, when read in conjunction with § 36-1402(d), does not require that a person must actually be in the act of shooting at an animal in order to be considered "hunting". State v. Thompson, 130 Idaho 819, 948 P.2d 174 (Ct. App. 1997).

**No Improper Delegation.**

Subsection (h) delegates no rule-making authority to the Boone and Crockett Club nor allows the private organization to determine whether an offense can be charged as a misdemeanor or felony; therefore, the Idaho legislature's adoption of the Boone and Crockett measuring system for determining a trophy big game animal is not an unconstitutional delegation of legislative power. State v. Casano, 140 Idaho 461, 95 P.3d 79 (Ct. App. 2004).

**Not Unconstitutionally Vague.**

Subsection (h) and §§ 36-1404(a) and 36-1401(c) are not unconstitutionally vague due to a failure to define the Boone and Crockett measuring standards for determining big game trophy animals because a definition of every term in a criminal statute is not required. State v. Casano, 140 Idaho 461, 95 P.3d 79 (Ct. App. 2004).

**Resident.**

The evidence clearly established that — his intent notwithstanding — a defendant charged with wrongful possession of an Idaho resident hunting license and with killing an elk without a valid license did not reside within the state for the required six-month period before he obtained an Idaho resident hunting license. State v. Wimer, 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990).

## CHAPTER 3

### ISSUANCE AND SALE OF LICENSES

## SECTION.

- 36-301. Forms of licenses — Printing — Chargeable to director.
- 36-302. Summary of laws printed — Distribution.
- 36-303. Distribution, issuance, and sale of licenses — Bonding of vendors.
- 36-304. Receipt cannot be issued in lieu nor alterations made.
- 36-305. Honorary or temporary licenses or

## SECTION.

- permits — Issuance unlawful — Penalty.
- 36-306. Vendor fee.
- 36-307. Reports of sales.
- 36-308. Monthly reports. [Repealed.]
- 36-309. Disposition of blank license stock and mutilated, voided or unsold licenses.
- 36-310. Vendors neglecting to account — Penalty.

**36-301. Forms of licenses — Printing — Chargeable to director.** — (a) Computerized licensing system. The fish and game commission shall prescribe by rule:

1. The procedures for the issuance of licenses and applications by a computerized licensing system.
  2. The criteria for authorizing a person as a license vendor. In developing the criteria, the commission shall consider the cost to the state to install and maintain a license vendor and the public's need to be able to reasonably obtain the necessary license. The criteria should include, but are not limited to, the remoteness of the location; availability of licenses in the area; angling and hunting supplies and services at the location; distance to the next closest license vendor; and the number of licenses issued at the location.
- (b) Forms. The forms of the various fishing, hunting and trapping

licenses and related applications shall be determined by the director. The director shall authorize printing the licenses and related applications as may be required from time to time and shall supervise the selling of same throughout the state.

(c) **Accountability.** The director shall manage the issuance of such licenses and be accountable for moneys received therefor.

**History.**

I.C., § 36-301, as added by 1976, ch. 95, § 2, p. 315; am. 1994, ch. 180, § 61, p. 420;

am. 1995, ch. 287, § 2, p. 951; am. 2003, ch. 32, § 17, p. 115.

#### STATUTORY NOTES

**Cross References.**

Hunting, trapping or fishing without license unlawful, § 36-401.

Report of license sales, § 36-307.

State controller's duty to prescribe form of receipts for license moneys, § 67-1002.

**Prior Laws.**

Former title 36, chapter 3, comprised of §§ 36-301A to 36-303A, was repealed by S.L. 1976, ch. 95, § 1.

**Effective Dates.**

Section 241 of S.L. 1994, ch. 180 provided that such act should become effective on and after the first Monday in January, 1995 [January 2, 1995] if the amendment to the Constitution of Idaho changing the name of the state auditor to state controller [1994 S.J.R. No. 109, p. 1493] was adopted at the general election held on November 8, 1994. Since such

amendment was adopted, the amendment to this section by § 61 of S.L. 1994, ch. 180 became effective January 2, 1995.

Section 16 of S.L. 1995, ch. 287 read: "An emergency existing therefor, which emergency is hereby declared to exist, Section 2 of this act shall be in full force and effect on and after its passage and approval. Section 1 of this act shall be in full force and effect on and after July 1, 1995. Additionally, the Fish and Game Commission is authorized to declare such other sections of this act in full force and effect as is necessary to effect an orderly implementation of the computerized licensing system as soon after July 1, 1995, as possible and the Fish and Game Commission files notification with the Secretary of State of adoption of a motion authorizing such action." Approved March 21, 1995.

**36-302. Summary of laws printed — Distribution.** — The director shall have copies of applicable fish and game laws and regulations printed and supplied to license vendors for distribution to the public and license purchasers.

**History.**

I.C., § 36-302, as added by 1976, ch. 95, § 2, p. 315.

**36-303. Distribution, issuance, and sale of licenses — Bonding of vendors.** — The director shall distribute such computerized licensing equipment and supplies to any person he may select as a license vendor for the purpose of license sale, issuance and distribution. All resident licenses shall be issued only within the state of Idaho. All computerized licensing equipment and unused supplies shall remain the property of the department. License vendors shall be responsible for all sums received by them from the sale of such licenses less the authorized vendor fee as provided for in section 36-306, Idaho Code, and shall be liable upon their official bonds, if any, and should any person fail to account for the same, any sum remaining due by reason of such failure may be recovered from such person or his bondsman in a civil action. Provided, that any and all license vendors, other than employees of the department of fish and game of the state of

Idaho, may be required to furnish to the director, before entering upon the sale of said licenses, a good and sufficient surety bond to the state of Idaho in an amount designated by the director. Provided further that when a surety bond is furnished by a surety company authorized to do business in the state of Idaho, said bond shall be approved and accepted by the director and filed in the state office of the department of fish and game. All bonds executed by any person required to furnish the same shall cover a period of two (2) years and said bond shall be in a form prescribed by said director.

The director may at his discretion furnish a scheduled bond sufficient to cover the amount designated by the director. All or any part of said bond may be paid for out of the fish and game account and shall be in lieu of any other bond requirement for the sale of licenses.

Any bond given in accordance with this section of the statute is declared to be an official bond of the state of Idaho.

Provided further that no person except an employee of the department shall be authorized to issue and sell such licenses until any required bond as hereinbefore provided for shall have been properly signed, approved and filed with the director. All moneys collected by any person for the sale of such licenses in the state of Idaho, with the exception of the vendor fee to be retained by them, shall be and remain the property of the department. Any person appropriating any of said funds of the department of fish and game for his own use shall be guilty of a felony.

#### History.

I.C., § 36-303, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 141, § 1, p. 320; am.

1995, ch. 64, § 3, p. 158; am. 1995, ch. 287, § 3, p. 951.

#### STATUTORY NOTES

##### Cross References.

Criminal liability for failure to account for moneys or unsold licenses, § 36-310.

Fish and game account, § 36-107.

Penalty for felony when not otherwise provided, § 18-112.

Reports of sales, § 36-307.

##### Amendments.

This section was amended by two 1995 acts which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 64, § 3, in the catchline and throughout the section, deleted "tags and permits" following "licenses"; and in the first paragraph deleted a former second sentence which read, "Provided that all resident licenses shall be sold only within the state of Idaho."

The 1995 amendment, by ch. 287, § 3, in the catchline deleted "tags and permits" following "licenses"; in the first sentence of the first paragraph, substituted "computerized licensing equipment and supplies" for "licenses, tags and permits" and substituted "select as a license vendor for the purpose of license sale, issuance" for "select for the purpose of sale"; in the second sentence of the first paragraph,

substituted "All resident" for "Provided that all resident" and substituted "issued" for "sold"; divided the former third sentence of the first paragraph into the present third and fourth sentences by substituting "All computerized licensing equipment and unused supplies shall remain the property of the department. License vendors shall" for "Any person to whom licenses, tags and permits are consigned shall be charged with the full value thereof, less the authorized sales commission therefor as provided in section 36-306, Idaho Code, and such persons shall"; in the present fourth sentence of the first paragraph, substituted "licenses less the authorized vendor fee as provided for in section 36-306, Idaho Code," for "licenses, tags and permits," and inserted "if any," following "official bonds"; in the fifth sentence of the first paragraph, substituted "all license vendors" for "all persons to whom licenses, tags and permits are consigned for sale," substituted "may be required" for "shall be required," deleted "tags and permits" following "sale of said licenses," and substituted "amount designated by the director." for "amount sufficient to cover all licenses, tags and permits so consigned."; in the first sentence of the second paragraph, substituted

"cover the amount designated by the director." for "cover all licenses, tags and permits to be consigned for sale"; in the second sentence of the second paragraph, substituted "game account" for "game fund" and deleted "tags or permits" at the end of the sentence; in the first sentence of the fourth paragraph, substituted "licenses until any required bond as hereinbefore" for "licenses, tags and permits until the bond hereinbefore"; in the second sentence of the fourth paragraph, deleted "tags and permits" following "licenses" and substituted "the vendor fee to be retained by them" for "any commission on said amount

that may be due any person selling the same as vendor thereof."

#### **Effective Dates.**

Section 3 of S.L. 1978, ch. 141 provided that the act should take effect on and after January 1, 1979.

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

**36-304. Receipt cannot be issued in lieu nor alterations made. —**  
No person authorized to sell licenses shall issue a receipt in lieu of a license or to alter any license as to its fee, type, class or privileges.

#### **History.**

I.C., § 36-304, as added by 1976, ch. 95,

§ 2, p. 315; am. 1992, ch. 81, § 3, p. 222; am. 1995, ch. 287, § 4, p. 951.

#### **STATUTORY NOTES**

#### **Effective Dates.**

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that

sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

**36-305. Honorary or temporary licenses or permits — Issuance unlawful — Penalty. —** No person including the director, any employee of the department or vendor or agent thereof shall at any time or under any circumstances issue any honorary license or any temporary license permitting any person to hunt, fish or trap in the state of Idaho; except that a temporary license may be issued as allowed by commission rule for the limited purpose of providing immediate proof of licensure for:

- (a) Telephonic or other electronic license issuances; and
- (b) Temporary failure of the computerized licensing system.

Nothing in this section shall preclude the director from issuing scientific collecting permits when such permits are issued in accordance with the provisions of section 36-106(e)5, Idaho Code.

#### **History.**

I.C., § 36-305, as added by 1976, ch. 95, § 2, p. 315; am. 1979, ch. 78, § 2, p. 193; am.

1992, ch. 81, § 4, p. 222; am. 1995, ch. 287, § 5, p. 951; am. 1997, ch. 220, § 1, p. 651.

#### **STATUTORY NOTES**

#### **Effective Dates.**

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that

sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

**36-306. Vendor fee. —** All persons authorized to issue licenses shall charge a vendor issuance fee of one dollar and seventy-five cents (\$1.75)

upon all licenses issued, one dollar (\$1.00) of which shall be retained by them as compensation for the issuance of such licenses; provided that the vendor fee for an eighth class license as that license is provided for in section 36-406(f), Idaho Code, shall be equal to one-half (1/2) the total vendor fee had each license, tag, permit or stamp been separately issued; provided further, the director may waive the vendor issuance fee for a license not issued by the department's computerized licensing system. Seventy-five cents (75¢) of the vendor fee shall be retained by the department, shall be deposited in the fish and game account, and shall be used to help offset the cost of the computerized licensing system. Such vendor fee shall be charged in addition to the regular cost of the license. However, in the case of crayfish or minnow traps, beaver, bobcat or lynx tags the vendor fee shall be charged for each issuance of tags for each species regardless of the number of tags issued in said transaction. Proceeds from department issued licenses may be set aside for the department's special operations program, including citizens against poaching.

**History.**

I.C., § 36-306, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 141, § 2, p. 320; am. 1981, ch. 69, § 2, p. 101; am. 1988, ch. 296, § 1, p. 937; am. 1989, ch. 129, § 1, p. 279; am.

1995, ch. 64, § 4, p. 158; am. 1995, ch. 287, § 6, p. 951; am. 2000, ch. 211, § 5, p. 538; am. 2002, ch. 234, § 1, p. 684; am. 2005, ch. 379, § 2, p. 1234.

**STATUTORY NOTES****Cross References.**

Fish and game account, § 36-107.

**Amendments.**

This section was amended by two 1995 acts which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 64, § 4, in the first sentence, deleted ", tags and permits" following "licenses" in two places; and deleted the former last sentence which read, "Be it further provided that no resident or duplicate license shall be issued without taking the written application of the purchaser in the manner prescribed by section 36-405(a), Idaho Code."

The 1995 amendment, by ch. 287, § 6, substituted the present catchline for the former version which read, "Commission on Sales — Written application of purchaser"; substituted the present first sentence for the former first sentence which read, "All persons authorized to sell licenses shall charge a commission of one dollar (\$1.00) upon all licenses, tags and permits for which there is a fee, to be retained by them as compensation for the sale of such licenses, tags or permits; provided that such commission fee shall be charged in

addition to the regular cost of the license, tag or permits."; added the present second sentence; in the present third sentence, substituted "vendor fee" for "commission fee" and deleted ", tag or permit" from the end of the sentence; in the fourth sentence, substituted "vendor fee" for "commission fee," substituted "issuance of tags" for "purchase of tags" and substituted "tags issued" for "tags purchased"; and deleted the former last sentence which read, "Be it further provided that no resident or duplicate license shall be issued without taking the written application of the purchaser in the manner prescribed by section 36-405(a), Idaho Code."

**Effective Dates.**

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-307. Reports of sales.** — The director is hereby authorized to establish contractual terms and provisions, including reporting requirements, with which license vendors must comply. Failure of any license

vendor to comply with the terms of said contract shall be cause for the director to terminate any such vendorship in accordance with commission rules. All moneys collected by license vendors from point of sale issuance other than the vendor issuance fees retained by the vendor shall be deposited weekly with the state treasurer into a separate trust fund established under the name of "State Treasurer — Fish and Game Trust Fund."

**History.**

I.C., § 36-307, as added by 1976, ch. 95, § 2, p. 315; am. 1995, ch. 287, § 7, p. 951.

**STATUTORY NOTES****Cross References.**

Moneys received from sales, criminal liability, failure to account, § 36-310.

Vendor issuance fee, § 36-306.

**Effective Dates.**

As provided in section 16 of Acts 1995, ch.

287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

**36-308. Monthly reports. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-308, as added by 1976, ch. 95, § 2, p. 315; am.

1994, ch. 180, § 62, p. 420; am. 1995, ch. 287, § 8, p. 951, was repealed by S.L. 1999, ch. 38, § 1, p. 76, effective July 1, 1999.

**36-309. Disposition of blank license stock and mutilated, voided or unsold licenses.** — All persons to whom blank license stock has been issued as herein provided, shall turn over and deliver to said director all mutilated, voided and unused license stock and unsold licenses and each of said persons authorized to handle licenses shall be held accountable for all unused license stock and all mutilated, voided or unsold licenses not so turned over and delivered to the director.

Provided, that when satisfactory proof is presented to the board of examiners, of unavoidable loss or destruction of the above the said board may relieve the person charged with accountability therefor, and order repaid to him any moneys already paid by him into the treasury on said account.

**History.**

I.C., § 36-309, as added by 1976, ch. 95, § 2, p. 315; am. 1994, ch. 180, § 63, p. 420;

am. 1995, ch. 287, § 9, p. 951.

**STATUTORY NOTES****Effective Dates.**

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that

sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

**36-310. Vendors neglecting to account — Penalty.** — Any person

who shall refuse or neglect to turn over, as herein provided, any moneys collected or authorized to be collected under the provisions of this act, or who shall fail, neglect or refuse to turn over and deliver all unused license stock and all mutilated, voided and unsold licenses shall be guilty of a felony, and upon conviction shall be immediately removed from office.

#### **History.**

I.C., § 36-310, as added by 1976, ch. 95, § 2, p. 315; am. 1995, ch. 287, § 10, p. 951.

#### **STATUTORY NOTES**

##### **Cross References.**

Penalty for violation for felony when not otherwise provided, § 18-112.

##### **Compiler's Notes.**

The words "this act", near the middle of the section, refer to S.L. 1976, ch. 95, which is compiled as § 22-102A and throughout Title 36. Probably, this reference should be to "this title", being title 36, Idaho Code.

##### **Effective Dates.**

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

## **CHAPTER 4**

### **LICENSES TO HUNT, FISH AND TRAP**

#### **SECTION.**

- 36-401. Hunting, trapping, fishing — License requirement — Exceptions.
- 36-402. Licenses — Authority — Limitations — Confidentiality.
- 36-403. Expiration dates — Licenses, tags and permits.
- 36-404. Classes of licenses.
- 36-405. Application for license — Duplicate license — Unlawful purchase, possession, and use of license.
- 36-406. Resident fishing, hunting and trapping licenses — Fees.
- 36-406A. Two pole permit.
- 36-407. Nonresident combination, fishing, hunting, and trapping licenses — Fees — Rights under.
- 36-408. Commission's authority — Tags — Permits — Nonresidents limited — Outfitters set-aside.

#### **SECTION.**

- 36-409. Game tags — Permits — Fees — Penalty.
- 36-409A. Disabled archery provisions.
- 36-410. Steelhead trout — Anadromous salmon permits.
- 36-411. Certificate of completion.
- 36-412. Education programs — Instructor qualifications — Fee.
- 36-412A. Education programs — Fines and forfeitures — Local shooting ranges.
- 36-413. Lifetime license certificate — Fee.
- 36-414. Migratory waterfowl validation. [Repealed.]
- 36-415. Discounted tag fees.
- 36-416. Schedule of license fees.
- 36-417. Voluntary donation — Idaho hunters feeding the hungry, inc.

**36-401. Hunting, trapping, fishing — License requirement — Exceptions.** — No person shall hunt, trap, or fish for or take any wild animal, bird or fish of this state, without first having procured a license as hereinafter provided. Provided that no license shall be required:

- (a)1. For children under the age of fourteen (14) years who are residents of this state to fish during the open season therefor.
2. For nonresident children under the age of fourteen (14) years to fish during the open season therefor provided they are accompanied by the holder of a valid fishing license, and provided further that any fish caught by such nonresident children shall be included in the bag and possession limit of such license holder.
3. For resident children under the age of twelve (12) years to hunt, take

or kill predatory, unprotected birds and animals by means other than with firearms.

4. For resident children under the age of fourteen (14) years to trap muskrats from irrigation ditches or property on which they live during the open season.

5. For children under the age of eighteen (18) years who are residents of a licensed foster home or a children's residential care facility to fish during the open season therefor, provided they are accompanied and supervised by the director, officer, or other employee of the facility where the child resides.

6. For children with life-threatening medical conditions participating in a hunt in association with a qualified organization as provided in section 36-408(6), Idaho Code.

7. For military veterans with disabilities participating in a hunt in association with a qualified organization as provided in section 36-408(7), Idaho Code.

8. For mentored hunters participating in a mentored hunting program as prescribed by the commission such that a person may apply to the department for a special authorization to take wildlife while accompanied by a mentor who possesses a valid Idaho hunting license and who is eighteen (18) years of age or older. At such time as a mentored hunter's special authorization is no longer valid, nothing in this paragraph shall be construed as altering the requirements of section 36-411, Idaho Code, to obtain a valid hunting license.

(b) For any person to fish on a "free fishing day" as may be designated by the commission.

(c) State Long-term Care Facility Residents. For any resident of a state long-term care facility to fish during open seasons, provided said state long-term care facility has a permit therefor from the director. The director is authorized to issue such permits upon the request of the head of the respective state long-term care facility having custody of said resident upon a showing that the state long-term care facility recommends the issuance of such permit and will assume full responsibility for and control over any resident while using said permit. For purposes of this subsection only, "state long-term care facility" shall mean the state hospital north, state hospital south, southwest Idaho treatment center, and state veterans homes, and "resident" shall mean any individual residing and receiving treatment services at a state long-term care facility.

(d) State Juvenile Corrections Center Students. For students of the state juvenile corrections center, under the supervision of an officer of the center, to fish during the open season.

(e) Boy Scouts. For boy scouts who are official participants in attendance at national or international encampments at Farragut State Park to take fish during the encampment period from Lake Pend Oreille in such areas and such numbers as may be designated by the commission.

(f) Participants in Fish and Game Sponsored Functions. For persons who are official participants in attendance at official department sponsored functions including clinics, courses or other educational events, while under the supervision of a department approved instructor for the function, to fish

during any open season, provided that the instructor has been issued an educational fishing permit by the director.

(g) Nothing contained herein shall be construed to prohibit citizens of the United States who are residents of the state of Idaho from carrying arms for the protection of life and property.

#### **History.**

I.C., § 36-401, as added by 1976, ch. 95, § 2, p. 315; am. 1985, ch. 225, § 1, p. 539; am. 1989, ch. 315, § 1, p. 811; am. 1989, ch. 353, § 1, p. 894; am. 1989, ch. 361, § 1, p. 906; am. 1990, ch. 56, § 1, p. 127; am. 1991, ch. 127, § 1, p. 280; am. 1992, ch. 81, § 5, p. 222; am.

1995, ch. 44, § 55, p. 65; am. 1998, ch. 357, § 1, p. 1116; am. 2000, ch. 211, § 6, p. 538; am. 2001, ch. 93, § 4, p. 232; am. 2006, ch. 145, § 1, p. 457; am. 2006, ch. 169, § 1, p. 520; am. 2009, ch. 117, § 1, p. 373; am. 2011, ch. 102, § 1, p. 260; am. 2011, ch. 109, § 2, p. 280.

#### **STATUTORY NOTES**

##### **Cross References.**

Juvenile correctional centers, § 20-504A.  
Penal sections of fish and game law, § 36-1401 et seq.  
State hospitals, §§ 66-115 to 66-118.  
Trapping defined, § 36-202.

##### **Prior Laws.**

Former title 36, chapter 4, comprised of §§ 36-401 to 36-442, was repealed by S.L. 1976, ch. 95, § 1.

##### **Amendments.**

This section was amended by two 2006 acts which appear to be compatible and have been compiled together.

The 2006 amendment, by ch. 145, rewrote subsection (c), which formerly read: "Institutional Inmates. For any inmate of the state hospital north, state hospital south, Idaho state school and hospital, and state veterans homes to fish during open seasons, provided said inmate has a permit therefor from the director. The director is authorized to issue such permits upon the request of the head of the respective institution having custody of said inmate upon a showing that the institution recommends the issuance of such permit and will assume full responsibility for and

control over said inmate while using said permit."

The 2006 amendment, by ch. 169, added subsection (a)(6).

The 2009 amendment, by ch. 117, added subsection (a)(7).

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 102, substituted "southwest Idaho treatment center" for "Idaho state school and hospital" in the last sentence in subsection (c).

The 2011 amendment, by ch. 109, added paragraph (a)(8).

##### **Effective Dates.**

Section 64 of S.L. 1995, ch. 44 declared an emergency and provided that §§ 4, 58 to 62 should be in full force and effect on and after passage and approval; approved March 6, 1995; § 65 provided that all the remaining sections of the act should be in full force and effect on and after October 1, 1995.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

#### **OPINIONS OF ATTORNEY GENERAL**

Because the intent of this section is only to punish a use of firearms by unlicensed hunters, it has not been made unconstitutional by the 1978 amendment of Idaho Const., Art. I, § 11. So long as a charge under this section presents proof of both a criminal act (being

unlicensed and in possession of an uncased firearm while in the fields and forests of this state) and criminal intent (intent to engage in hunting), the law is constitutional and enforceable. OAG 86-5.

#### **RESEARCH REFERENCES**

**A.L.R.** — Validity, Construction, and Application of State Statutes Prohibiting, Limiting,

or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

**36-402. Licenses — Authority — Limitations — Confidentiality.** — The licenses mentioned in this chapter shall entitle the person to whom issued to take such wildlife as may be authorized by said license, subject to the limitations set forth under this title and commission regulations promulgated pursuant thereto. Except as otherwise provided by law relating to the release of information to a governmental entity or law enforcement agency, any personal information including, but not limited to, names, personal and business addresses and phone numbers, sex, height, weight, date of birth, social security and driver's license numbers, or any other identifying numbers and/or information related to any Idaho fish and game licenses, permits and tags shall be confidential and not subject to disclosure pursuant to the provisions of chapter 3, title 9, Idaho Code, unless written consent is obtained from the affected person.

**History.**

I.C., § 36-402, as added by 1976, ch. 95, § 2, p. 315; am. 2010, ch. 245, § 2, p. 629.

#### STATUTORY NOTES

**Amendments.**

The 2010 amendment, by ch. 245, in the section heading, added "confidentiality"; and added the last sentence.

**Effective Dates.**

Section 5 of S.L. 2010, ch. 245, declared an emergency. Approved April 8, 2010.

**36-403. Expiration dates — Licenses, tags and permits.** — (a) Annual Licenses — Tags and Permits. All annual hunting and fishing licenses shall expire December 31 of the year for which they are valid. Trapping licenses shall expire on June 30 next following date of issuance. All tags and permits issued pursuant to the provisions of this chapter shall be valid only during the time that the corresponding basic license is valid.

(b) Senior Resident, Blind Person and Disabled Person Permits. All free senior resident, blind person and disabled person permits issued prior to July 1, 1998, shall expire on December 31, 1998. Thereafter, all senior resident, blind person and disabled person permits shall be an annual license.

**History.**

I.C., § 36-403, as added by 1976, ch. 95, § 2, p. 315; am. 1986, ch. 5, § 1, p. 43; am. 1990, ch. 7, § 1, p. 13; am. 1998, ch. 357, § 2, p. 1116.

**36-404. Classes of licenses.** — The licenses required by the provisions of this title shall be of eight (8) classes. Classes one (1) through five (5) and eight (8) in this section may be purchased or obtained only by persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code, or who are valid holders of a lifetime license certificate.

Class 1: Adult Combination — Hunting — Fishing — Trapping Licenses. Licenses to be issued only to persons who are residents of the state of Idaho.

Class 2: Junior Hunting — Trapping — Youth Small Game Licenses.

(a) Junior hunting license. Licenses to be issued only to persons who are residents of the state of Idaho and are between twelve (12) and seventeen (17) years of age, inclusive. Provided, that a license may be issued to

qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age.

(b) Junior trapping licenses. Licenses to be issued only to persons who are residents of the state of Idaho and are seventeen (17) years of age or younger.

(c) Youth small game licenses. Licenses to be issued only to qualified persons who are residents of the state of Idaho and are ten (10) or eleven (11) years of age to hunt upland game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state while accompanied in the field by an adult licensed to hunt in the state of Idaho. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt turkey permit; however, said persons shall not hunt until they are ten (10) years of age.

Class 3: Junior Combination — Fishing Licenses. Licenses to be issued only to persons who are residents of the state of Idaho between fourteen (14) and seventeen (17) years of age, inclusive.

Class 4: Senior Resident Combination License. Licenses to be issued only to persons over sixty-five (65) years of age who have been bona fide residents of the state of Idaho for a continuous period of not less than five (5) years last preceding application.

Class 5: Resident Lifetime Combination — Hunting — Fishing License. Licenses to be issued only to persons who are valid holders of a lifetime license certificate.

Class 6: Nonresident Combination — Hunting — Fishing — Trapping — Junior Mentored Hunting — Youth Small Game — Youth Hunter Education Graduate — Disabled Combination License for American Veteran Participating in a Hunt in Association with a Qualified Organization — Licenses. Licenses required of persons who are nonresidents.

Class 7: Duplicate License — Tag. A license or tag to be issued as a replacement for an original license or tag lost or mutilated. Said license or tag shall be issued in the same class and type as the original and upon issuance of such duplicate license or tag the original license or tag shall become null and void.

Class 8: Resident Hunting and Fishing License with Tags, Permits and Stamps. Licenses to be issued only to persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code.

#### History.

I.C., § 36-404, as added by 1976, ch. 95, § 2, p. 315; am. 1983, ch. 56, § 1, p. 132; am. 1986, ch. 51, § 2, p. 145; am. 1986, ch. 52, § 2, p. 149; am. 1988, ch. 205, § 1, p. 385; am. 1996, ch. 185, § 1, p. 582; am. 1998, ch. 175, § 3, p. 615; am. 2000, ch. 211, § 7, p. 538; am. 2002, ch. 234, § 2, p. 684; am. 2008, ch. 98, § 1, p. 265; am. 2010, ch. 50, § 1, p. 94; am. 2011, ch. 88, § 1, p. 183.

#### STATUTORY NOTES

##### Cross References.

Honorary or temporary licenses unlawful, § 36-305.

Lifetime license certificate, § 36-413.

##### Amendments.

The 2008 amendment, by ch. 98, substituted "huntable furbearers" for "pygmy rabbits" in subsection (c) under Class 2.

The 2010 amendment, by ch. 50, added the proviso at the end of subsection (c) under Class 2.

The 2011 amendment, by ch. 88, inserted "Disabled Combination License for American Veteran Participating in a Hunt in Association with a Qualified Organization —" in the heading of Class 6.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-405. Application for license — Duplicate license — Unlawful purchase, possession, and use of license. — (a) Application Required.**

1. Any person making application for a senior resident license, or resident license shall provide his Idaho driver's license number as proof of residence, or in the case of nondrivers, other suitable proof of residency, and state the class of license applied for, the name of the applicant, the age of the applicant, his date of birth, his length of residence, his current address, and such other information as may be required by the director.
2. Any person making application for a duplicate license shall state the type and class of license originally purchased and such other information as may be required by the director.
3. No person shall willfully make a false statement as to:
  - (A) Name, age, his date of birth, length of residence or current address when such statement is made for the purpose of obtaining any license.
  - (B) Type and class of original license purchased when applying for a duplicate license.

(b) Loss of License — New One Required. In case of loss of a license, a new one shall be required to entitle the person who lost the same to hunt, fish or trap. Such person may upon application:

1. Purchase a new license at the regular fee; or
2. Replace a lost license with a duplicate license for which a fee as specified in section 36-416, Idaho Code, shall be charged.
3. When a duplicate license has been issued the original license shall become null and void.

(c) Unlawful Purchase, Possession and Use of License.

1. Every person buying a license must buy a license of the proper type or class according to his residence and age. No person shall purchase or possess a license of the wrong class and such license shall be void and of no effect from the date of issuance.

2. No person shall:

(A) Acquire more than one (1) regular controlled hunt permit per species or more tags per species than the commission has set a bag limit for that species except as provided in subsection (b) of this section or to have said permits or tags in his possession.

(B) Transfer any fishing, hunting, or trapping license to any other person or for any person to make use of such license issued to any other person.

**History.**

I.C., § 36-405, as added by 1976, ch. 95,

§ 2, p. 315; am. 1980, ch. 339, § 1, p. 872; am. 1990, ch. 8, § 1, p. 13; am. 1992, ch. 81, § 6, p.

222; am. 1995, ch. 63, § 1, p. 157; am. 1995, ch. 64, § 5, p. 158; am. 1995, ch. 287, § 11, p. 951; am. 2000, ch. 211, § 8, p. 538.

## STATUTORY NOTES

### Cross References.

Honorary or temporary licenses unlawful, § 36-305.

### Amendments.

This section was amended by three 1995 acts — ch. 63, § 1, and ch. 64, § 5, both effective July 1, 1995, and ch. 287, § 11, effective as provided for by § 16 of the act as explained below. The amendments by ch. 63, § 1 and ch. 64, § 5 have been compiled together and are explained below. The amendment by ch. 287, § 11 is explained below.

The 1995 amendment, by ch. 63, § 1, in subdivision (a)3.(A), substituted “any license, tag or permit” for “a license, tag or permit of a type or class he is not entitled to”.

The 1995 amendment, by ch. 64, § 5, in the section title following “and Use of License”, deleted “Tags or Permits”; in subsection (a)1. deleted “or permit” following the first occurrence of “license”, substituted “provide” for “produce”, added “number” following “Idaho driver’s license”, substituted “state” for “make and sign a written application stating”, and inserted “his date of birth,” following “the age of the applicant,”; in subsection (a)2. deleted “or tag” following each occurrence of “license” and substituted “state” for “make and sign a written application stating”; in subdivision (a)3.(A) inserted “his date of birth,” following “age,” and deleted “, tag or permit” following “license”; in subdivision (a)3.(B) deleted “or tag” following each occurrence of “license”; throughout subsection (b), following the title, deleted “or tag” following “license”; in subsection (c) deleted “, Tag and Permit” from the title; in subdivision (c)1. deleted “, tag or permit” from each occurrence of “license”; and in subdivision (c)2.(B) deleted “, permit or tag” from each occurrence of “license”.

The 1995 amendment, by ch. 287, § 11, in the section title following “and Use of License”, deleted “Tags or Permits”; in subsection (a)1. substituted “state” for “shall make and sign a written application stating”, and inserted “his date of birth,” following “the age of the applicant,”; in subsection (a)2. deleted “or tag” following the first occurrence of “license” and substituted “state” for “make and sign a written application stating”; in subdivision (a)3.(A) inserted “his date of birth,” following “age,” and deleted “, tag or permit” following “license”; in subdivision (a)3.(B) deleted “or tag” following each occurrence of “license”; in all of subsection (b), following the title, deleted “or tag” from each occurrence of “license”; in subsection (c) deleted “, Tag and Permit” from the title; in subdivision (c)1. deleted “, tag or permit” from each occurrence of “license”; and in subdivision (c)2.(B) deleted “, permit or tag” from each occurrence of “license”.

### Effective Dates.

Section 5 of S.L. 1980, ch. 339 provided that the act should take effect on and after January 1, 1981.

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

## JUDICIAL DECISIONS

### ANALYSIS

#### Offenses.

Residency requirements.

#### Offenses.

The offenses of wrongful possession of an Idaho resident hunting license and of unlawfully taking big game involve separate acts or omissions and, therefore, double punishment was not barred by § 18-301. *State v. Wimer*, 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990).

#### Residency Requirements.

The evidence clearly established that — his

intent notwithstanding — a defendant charged with wrongful possession of an Idaho resident hunting license and with killing an elk without a valid license did not reside within the State of Idaho for the required six-month period before he obtained an Idaho resident hunting license. *State v. Wimer*, 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990).

**36-406. Resident fishing, hunting and trapping licenses — Fees.**

— (a) Adult Licenses — Combination — Fishing — Hunting — Trapping. A license of the first class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to hunt and fish for game animals, game birds, unprotected and predatory animals and fish of the state, a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to fish in the public waters of the state, a fee as specified in section 36-416, Idaho Code, for a hunting license entitling the purchaser to hunt game animals, game birds, unprotected and predatory animals of the state, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to trap furbearers, unprotected and predatory animals of the state.

(b) Junior Licenses — Hunting — Trapping. A license of the second class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a hunting license, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(c) Junior Combination — Fishing Licenses. A license of the third class may be purchased by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(d) Senior Resident Combination. A license of the fourth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(e) Lifetime Licenses — Combination — Hunting — Fishing. A license of the fifth class may be obtained at no additional charge by a person possessing the qualifications therein described for a combined hunting and fishing license, for a hunting license, or for a fishing license, entitling the person to the same privileges as the corresponding license of the first class provides. Lifetime licensees must be certified under the provisions of section 36-413, Idaho Code, before being issued a license to hunt.

(f) A license of the eighth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, entitling the purchaser to hunt and fish for game animals, game birds, fish, and unprotected and predatory animals of the state. With payment of the required fee, a person shall receive with this license a deer tag, an elk tag, a bear tag, a turkey tag, a mountain lion tag, an archery hunt permit, a muzzleloader permit, a steelhead trout permit and an anadromous salmon permit. The director shall promptly transmit to the state treasurer all moneys received pursuant to this subsection for deposit as follows:

(i) Four dollars (\$4.00) in the [fish and game] set-aside account for the purposes of section 36-111(1)(a), Idaho Code;

- (ii) Two dollars (\$2.00) in the [fish and game] set-aside account for the purposes of section 36-111(1)(b), Idaho Code;
- (iii) One dollar and fifty cents (\$1.50) in the [fish and game] set-aside account for the purposes of section 36-111(1)(c), Idaho Code; and
- (iv) The balance in the fish and game account.

All persons purchasing a license pursuant to this subsection shall observe and shall be subject to all rules of the commission regarding the fish and wildlife of the state.

If the purchaser of this license does not meet the archery education requirements of section 36-411(b), Idaho Code, then, notwithstanding the provisions of section 36-304, Idaho Code, the archery hunt permit portion of this license is invalid. The fee for this license will not change and the license must be issued without the archery permit validation.

(g) **Disabled Persons Licenses — Combination — Fishing.** A license of the first class may be had by any resident disabled person on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license, entitling the purchaser to the same privileges as the corresponding license of the first class provides. A disabled person means a person who is deemed disabled by one (1) or more, but not necessarily all, of the following: the railroad retirement board pursuant to title 45 of the United States Code, or certified as eligible for federal supplemental security income (SSI); or social security disability income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or certified as permanently disabled by a physician. Once determination of permanent disability has been made with the department, the determination shall remain on file within the electronic filing system and the license holder shall not be required to present a physician's determination each year or prove their disability each year.

(h) **Military Furlough Licenses — Combination — Fishing.** A license of the first class may be had by a resident person engaged in the military service of the United States, while on temporary furlough or leave, possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and as specified in section 36-416, Idaho Code, for a fishing license.

(i) **Youth Small Game Licenses — Hunting.** A license of the second class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, provided that the license shall be valid only for hunting upland game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state while accompanied in the field by the holder of an adult Idaho hunting license.

**History.**

I.C., § 36-406, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 2, p. 872; am. 1981, ch. 98, § 1, p. 142; am. 1986, ch. 52, § 3, p. 149; am. 1988, ch. 205, § 2, p. 385; am. 1990, ch. 372, § 3, p. 1023; am. 1990, ch. 388, § 9, p. 1067; am. 1994, ch. 84, § 1, p. 198; am. 1995, ch. 287, § 12, p. 951; am. 1998, ch. 298, § 2, p. 984; am. 1998, ch. 357, § 3, p. 1116; am. 1999, ch. 32, § 1, p. 63; am. 2000, ch. 211, § 9, p. 538; am. 2001, ch. 158, § 1, p. 565; am. 2002, ch. 234, § 3, p. 684; am. 2006, ch. 168,

§ 1, p. 518; am. 2008, ch. 98, § 2, p. 266; am. 2010, ch. 50, § 2, p. 94.

### STATUTORY NOTES

#### Cross References.

Fish and game account, § 36-107.  
Form of license, § 36-301.  
Honorary or temporary licenses unlawful, § 36-305.

#### Amendments.

This section was amended by two 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 298, § 2, substituted "eighty-one dollars (\$81.00)" for "sixty-nine dollars (\$69.00)" in subsection (f).

The 1998 amendment, by ch. 357, § 3, substituted "three dollars (\$3.00)" for "four dollars (\$4.00)" in subsection (d) and added subsection (g).

The 2006 amendment, by ch. 168, in subsection (g), inserted "one (1) or more, but not necessarily all, of the following:" and "or certified as permanently disabled by a physician. Once determination of permanent disability has been made with the department, the determination shall remain on file within the electronic filing system and the license holder shall not be required to present a physician's determination each year or prove their disability each year."

The 2008 amendment, by ch. 98, substituted "hunting furbearers" for "pygmy rabbits" in subsection (i).

The 2010 amendment, by ch. 50, substituted "person possessing the qualifications therein described" for "resident of ten (10) or eleven (11) years of age" in subsection (i).

#### Legislative Intent.

Section 1 of S.L. 1998, ch. 298 provides: "Legislative Intent. It is the Legislature's intent that the Fish and Game Commission and

the Department of Fish and Game prepare a long-term license fee adjustment proposal to provide fiscal stability to be presented to the Legislature in 1999 as provided in the statement of purpose." See S.L. 2000, ch. 211.

#### Compiler's Notes.

The bracketed insertions in subdivisions (f)(i), (f)(ii), and (f)(iii) were added by the compiler to supply the correct, full name of the referenced account.

The words enclosed in parentheses so appeared in the law as enacted.

#### Effective Dates.

Section 5 of S.L. 1980, ch. 339 provided that the act should take effect on and after January 1, 1981.

Section 3 of S.L. 1988, ch. 205 provided that the act should take effect on and after January 1, 1989.

Section 2 of S.L. 1994, ch. 84, declared an emergency and provided this act shall be in full force and effect on and after March 10, 1994, and retroactively to January 1, 1994. Approved March 10, 1994.

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

Section 4 of S.L. 1998, ch. 298 declared an emergency. Effective on and after May 1, 1998.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-406A. Two pole permit.** — The commission is authorized to promulgate rules specifying seasons and waters where a resident or nonresident may purchase a permit authorizing the person to use two (2) poles on waters that have been designated as "two pole" waters by commission rule subject to payment of a fee as specified in section 36-416, Idaho Code. A person who has a two pole permit may utilize two (2) poles to fish with during the season so specified by commission rule and on the waters so specified by commission rule. Bona fide residents of Idaho who are expressly exempt from license requirements to fish in the public waters of the state may purchase a permit to use as an individual pursuant to this section as specified by commission rule. Unlicensed nonresident children under the age of fourteen (14) years shall be eligible to purchase a permit to use as an individual if accompanied by a holder of a valid license and provided that any fish caught by such nonresident children shall be included in the bag and possession limit of such license holder.

**History.** § 1, p. 928; am. 2000, ch. 211, § 10, p. 538; I.C., § 36-406A, as added by 1998, ch. 291, am. 2008, ch. 211, § 1, p. 667.

#### STATUTORY NOTES

##### Amendments.

The 2008 amendment, by ch. 211, in the section catchline, substituted "permit" for "validation"; in the first sentence, substituted "may purchase a permit" for "may apply for a validation to be placed on their fishing license"; in the second sentence, substituted

"two pole permit" for "validation"; and added the last two sentences.

##### Effective Dates.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

#### RESEARCH REFERENCES

**A.L.R.** — Validity, Construction, and Application of State Statutes Prohibiting, Limiting, or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

**36-407. Nonresident combination, fishing, hunting, and trapping licenses — Fees — Rights under.** — Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) Nonresident Hunting License. A license issued only to a person twelve (12) years of age or older entitling said person to pursue, hunt, or kill game birds, small game animals, unprotected birds and animals and predatory birds and animals and to purchase game tags as provided in section 36-409(b), Idaho Code. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(b) Nonresident Season Fishing License. A license entitling a person to fish in the public waters of the state. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(c) Nonresident Trapping License. A license entitling a person to trap fur-bearing, unprotected, and predatory animals. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code, providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) Nonresident Nongame License. A license entitling a person to carry a shotgun or rifle for the protection of livestock, or to pursue, hunt and kill unprotected birds and animals and predatory birds and animals of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. This license shall be valid only during the period of January 1 to August 31 of the calendar year in which issued, unless verified by the director that the licensee requires such a license to authorize him to carry a shotgun or rifle for the protection of livestock, in which case said license shall be valid until December 31 of the year in which issued.

(e) Nonresident Small Game Hunting License. A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, cottontail rabbits, hunttable furbearers, and unprotected and predatory birds and animals of

this state. A person holding this license shall purchase the appropriate required tags and permits, and may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(f) Falconry Meet Permit. The director may issue a special permit for a regulated meet scheduled for a specific number of days upon payment of a fee as specified in section 36-416, Idaho Code. Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) Daily Fishing License — Resident May Purchase. A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of a fee as specified in section 36-416, Idaho Code, for the first effective day and a fee as specified in section 36-416, Idaho Code, for each consecutive day thereafter.

(h) Nonresident Three Day Fishing License with Steelhead or Salmon Permit. A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for any fish, including steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of a fee as specified in section 36-416, Idaho Code. The three (3) day license holder may fish for any species of fish, steelhead trout and anadromous salmon subject to the limitations prescribed in rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so.

(i) Nonresident Junior Fishing License. A license entitling a nonresident who is less than eighteen (18) years of age to fish in the waters of this state may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(j) Nonresident Combination Licenses. A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory animals of the state may be had by a person twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. A license may be issued to a qualified person who is eleven (11) years of age to allow the application for a controlled hunt permit; however, the person shall not hunt until he is twelve (12) years of age.

(k) Nonresident Junior Mentored Hunting License. A license entitling a nonresident between twelve (12) and seventeen (17) years of age, inclusive, to hunt game animals, upland game birds (including turkeys), migratory game birds, cottontail rabbits, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required tags as provided in section 36-409(b), Idaho Code, and permits. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt permit; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(l) Nonresident Youth Small Game Licenses — Hunting. A license entitling a nonresident of ten (10) or eleven (11) years of age to hunt upland

game birds (including turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state only while accompanied in the field by the holder of an adult Idaho hunting license may be had upon payment of a fee as specified in section 36-416, Idaho Code. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt turkey permit; however, said persons shall not hunt until they are ten (10) years of age.

(m) Youth Hunter Education Graduate Licenses — Hunting — Resident May Purchase. A license entitling a person between ten (10) and seventeen (17) years of age, inclusive, to hunt upland game birds (except turkeys), migratory game birds, cottontail rabbits, huntable furbearers, and unprotected and predatory birds and animals of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required permits. A license of this kind may be issued to a resident or nonresident person, notwithstanding the provisions of section 36-405, Idaho Code, upon payment of a fee as specified in section 36-416, Idaho Code.

(n) Nonresident Disabled American Veteran. A license entitling a person to participate in a hunt in association with a qualified organization. "Qualified organization," as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code.

#### **History.**

I.C., § 36-407, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 3, p. 872; am. 1981, ch. 98, § 2, p. 142; am. 1985, ch. 65, § 1, p. 135; am. 1986, ch. 7, § 1, p. 46; am. 1986, ch. 16, § 1, p. 56; am. 1986, ch. 52, § 4, p. 149; am. 1986, ch. 138, § 1, p. 373; am. 1986, ch. 244, § 1, p. 662; am. 1988, ch. 206, § 1, p. 387; am. 1990, ch. 372, § 4, p. 1023; am. 1990, ch. 388, § 10, p. 1067; am. 1993, ch. 27, § 1, p. 93; am. 1995, ch. 287, § 13, p. 951; am. 1996, ch. 185, § 2, p. 582; am. 1998, ch. 47, § 1, p. 194; am. 1998, ch. 213, § 1, p. 742; am. 1999, ch. 43, § 1, p. 103; am. 2000, ch. 211, § 11, p. 538; am. 2002, ch. 234, § 4, p. 684; am. 2008, ch. 59, § 1, p. 148; am. 2008, ch. 98, § 3, p. 268; am. 2010, ch. 50, § 3, p. 94; am. 2011, ch. 88, § 2, p. 183.

#### **STATUTORY NOTES**

##### **Cross References.**

Bear Lake, agreements with Utah for reciprocal recognition of licensing rights authorized, § 36-1003; cooperative agreements with Utah and Wyoming for development of fishing resources authorized, § 36-1005.

Classes of licenses, § 36-404.

Form of licenses, § 36-301.

Honorary or temporary licenses unlawful, § 36-305.

Snake river forming Oregon, Washington boundary, fishing in restricted, § 36-1001. .

##### **Amendments.**

This section was amended by two 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 47, § 1, in subsection (e) inserted "shall purchase the appropriate required tags and permits, and" following "A person holding this license".

The 1998 amendment, by ch. 213, § 1, added subsection (i).

This section was amended by two 2008 acts which appear to be compatible and have been compiled together.

The 2008 amendment, by ch. 59, in subsection (e), deleted "Two-Day" following "Nonresident," in the heading and substituted "huntable furbearers, and unprotected and predatory birds and animals of this state" for "and pygmy rabbits."

The 2008 amendment, by ch. 98, in subsections (k) through (m), substituted "huntable furbearers" for "pygmy rabbits."

The 2010 amendment, by ch. 50, added the proviso at the end of subsection (l).

The 2011 amendment, by ch. 88, added subsection (n).

##### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

##### **Effective Dates.**

Section 5 of S.L. 1980, ch. 339 provided that the act should take effect on and after January 1, 1981.

Section 2 of S.L. 1985, ch. 65 provided that the act should be in full force and effect on and after January 1, 1986.

Section 3 of S.L. 1986, ch. 7 declared an emergency and provided that the act would be in full force and effect on and after the 30th day after passage and approval (March 22, 1986). Approved February 20, 1986.

Section 2 of S.L. 1986, ch. 244 declared an emergency. Approved April 4, 1986.

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that

sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

Section 3 of S.L. 1996, ch. 185 declared an emergency and provided that the act should be in full force and effect on and after May 1, 1996. Approved March 12, 1996.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

#### RESEARCH REFERENCES

**A.L.R.** — Validity, Construction, and Application of State Statutes Prohibiting, Limiting,

or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

**36-408. Commission's authority — Tags — Permits — Nonresidents limited — Outfitters set-aside.** — (1) Tags and Permits — Method of Use. The commission is hereby authorized to prescribe the number and kind of wildlife that may be taken under authority of the several types of tags and permits provided for in this title, and the manner in which said tags and permits shall be used and validated.

(2) Limit — Licenses, Tags or Permits — Controlled Hunts. The commission is hereby authorized to establish a limit annually as to the number of each kind and class of licenses, tags, or permits to be sold or issued and is further authorized to limit the number or prohibit entirely, the participation by nonresidents in controlled hunts.

(3) Outfitters Set-Aside. When the commission establishes a limit as to the number of nonresident deer tags and nonresident elk tags, it shall set aside annually a maximum of twenty-five percent (25%) of the nonresident deer tag and nonresident elk tag limit. The set-aside tags shall be sold pursuant to commission rule, only to persons that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

In order for a person to purchase any set-aside nonresident deer tag or nonresident elk tag, that person's outfitter must submit an application with the proper fees as required by the director. If any nonresident deer tags or nonresident elk tags set aside pursuant to this subsection are unsold by July 1 of the year in which they were set aside, they may be sold by the department to the general public who are nonresidents. The commission may promulgate all necessary rules to implement the provisions of this subsection.

(4) Deer and Elk Tag Allocation. If the commission limits the number of deer or elk tags available for use in any game management area, unit or zone, the commission may allocate by rule a number of deer or elk tags for use by hunters that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

(5) Special Game Tags. The commission is hereby authorized to issue two (2) special bighorn sheep tags per year.

(a) Auction bighorn sheep tag. One (1) special bighorn sheep tag shall be auctioned off by an incorporated nonprofit organization dedicated to wildlife conservation, selected by the commission. The tag shall be issued by the department of fish and game to the highest eligible bidder. No more than five percent (5%) of all proceeds for the tag may be retained by the organization. The tag to be issued pursuant to this subsection shall be taken from the nonresident bighorn sheep tag quota. The net proceeds shall be forwarded to the director for deposit in the fish and game expendable trust account and shall be used for bighorn sheep research and management purposes. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake River and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep. No transplants of bighorn sheep accomplished with moneys raised pursuant to this subsection shall occur in any area until hearings are conducted in the area.

(b) Lottery bighorn sheep tag. The commission is also authorized to issue one (1) special bighorn sheep tag which will be disposed of by lottery. The lottery permit can be marketed by the department of fish and game or a nonprofit organization dedicated to wildlife conservation selected by the commission. The tag will be issued by the department of fish and game to an eligible person drawn from the lottery provided in this subsection. No more than twenty-five percent (25%) of gross revenue can be retained for administrative costs by the organization. All net proceeds for the tag disposed of by lottery pursuant to this subsection shall be remitted to the department and deposited in the fish and game expendable trust account. Moneys in the account from the lottery bighorn sheep tag shall be utilized by the department in solving problems between bighorn sheep and domestic sheep, solving problems between wildlife and domestic animals or improving relationships between sportsmen and private landowners.

(6) Issuance of free permit or tag to minor children with life-threatening medical conditions. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to minor children who have life-threatening medical conditions that have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection (6). For purposes of this subsection (6) a "qualified organization" means a nonprofit organization that is qualified under section 501(c)(3) of the Internal Revenue Code and that affords opportunities and experiences to minor children with life-threatening medical conditions.

(7) Issuance of free permit or tag to military veterans with disabilities. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to disabled military veterans who have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection (7). For purposes of this subsection (7), a "qualified organization" means a governmental agency that assists veterans or a nonprofit organization that is qualified under section 501(c)(3) of the Internal Revenue Code and that affords opportunities, experiences and assistance to disabled veterans.

(8) Special Wolf Tags. The commission is hereby authorized to issue up to ten (10) special auction or lottery tags for hunting wolves. Special wolf tags will be auctioned off or made available through lottery by incorporated nonprofit organizations dedicated to wildlife conservation and selected by the director. No more than five percent (5%) of all proceeds for each tag may be retained by the nonprofit organization for administrative costs involved. Each wolf tag shall be issued by the department of fish and game and awarded to the highest eligible bidder or winner of a lottery. Each tag will be good for the harvest of one (1) wolf pursuant to commission rule. The proceeds from each tag will be sent to the director to be placed in the department general license fund.

**History.**

I.C., § 36-408, as added by 1976, ch. 95, § 2, p. 315; am. 1986, ch. 235, § 1, p. 646; am. 1987, ch. 322, § 1, p. 677; am. 1991, ch. 144, § 1, p. 342; am. 1995, ch. 287, § 14, p. 951;

am. 1997, ch. 136, § 1, p. 404; am. 2001, ch. 170, § 1, p. 582; am. 2006, ch. 169, § 2, p. 520; am. 2007, ch. 73, § 1, p. 196; am. 2009, ch. 117, § 2, p. 373; am. 2009, ch. 314, § 2, p. 913.

**STATUTORY NOTES****Cross References.**

Fish and game expendable trust account, § 36-108.

subsection (7) and redesignated former subsection (7) as subsection (8).

The 2009 amendment, by ch. 314, in subsection (5)(b), deleted "by being utilized in the veterinarian program established in subsection (e)9, of section 36-106, Idaho Code" from the end.

**Federal References.**

Section 501(c)(3) of the Internal Revenue Code, referred to in subsections (6) and (7), is codified as 26 USCS § 501(c)(3).

**Amendments.**

The 2006 amendment, by ch. 169, added subsection (6).

**Effective Dates.**

As provided in section 16 of Acts 1995, ch. 287 the Fish and Game Commission notified the Secretary of State on August 24, 1995 that sections 3 to 15 inclusive of Acts 1995, ch. 287 became effective December 1, 1995 and apply to all licenses valid on and after January 1, 1996.

Section 3 of S.L. 2009, ch. 314 declared an emergency. Approved May 7, 2009.

The 2007 amendment, by ch. 73, added subsection (7).

This section was amended by two 2009 acts which appear to be compatible and have been compiled together.

The 2009 amendment, by ch. 117, added

**A.L.R.** — Validity, Construction, and Application of State Statutes Prohibiting, Limiting,

or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

**RESEARCH REFERENCES**

**36-409. Game tags — Permits — Fees — Penalty.** — (a) Resident Game Tags. A resident who has obtained authorization to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person who holds a senior resident combination license or any person who holds a junior combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer, elk, or turkey tag for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those

persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code. In the event an emergency is declared to open a season to protect private property as provided in section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer, elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) Nonresident Game Tags. A nonresident who has purchased a license to hunt, as provided in section 36-407(a) or (k), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, or a resident who has purchased or obtained a license or authorization to hunt, as provided in section 36-401 or 36-406, Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further that a nonresident who has purchased a license to hunt, as provided in section 36-407(k), Idaho Code, shall be eligible to receive a junior mentored deer, elk, bear, or turkey tag for a fee as specified in section 36-416, Idaho Code.

(c) Game Tags Required. The appropriate tag must be had for the hunting or taking of each and every one of the aforementioned wildlife. Provided, however, that the requirements for a wolf tag, a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. Provided further, that the commission may promulgate rules to allow a nonresident deer or elk tag to be used to hunt and kill either a bear, wolf or a mountain lion during the open season for deer or elk in that area, unit or zone as may be specified by the commission. All of said tags are to bear and have serial numbers.

(d) Game Tag to Be Validated and Attached to Carcass. As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission rule.

(e) Archery Permits. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as an archery hunt must have in his possession an archery hunt permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(f) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(g) Hound Hunter Permit — Resident — Nonresident. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased by resident and nonresident license holders for a fee as specified in section 36-416, Idaho Code.

(h) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture

permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be as specified in section 36-416, Idaho Code, and the permit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers.

(i) Wildlife Management Area (WMA) Upland Game Bird Permit. The commission may, under rules as it may prescribe, issue a wildlife management area upland game bird permit that must be purchased by all persons over sixteen (16) years of age prior to hunting stocked upland game birds on state wildlife management areas designated by the commission. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nursing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(n) Disabled American Veteran Game Tags. Any nonresident disabled American veteran participating in a hunt in association with a qualified organization may be issued a bear, deer, elk or turkey tag for a fee as specified in section 36-416, Idaho Code. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

**History.**

I.C., § 36-409, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 171, § 1, p. 391; am. 1980, ch. 339, § 4, p. 872; am. 1981, ch. 98, § 3, p. 142; am. 1982, ch. 230, § 1, p. 606; am. 1984, ch. 197, § 2, p. 484; am. 1986, ch. 7, § 2, p. 46; am. 1986, ch. 52, § 5, p. 149; am. 1987, ch. 253, § 1, p. 515; am. 1988, ch. 209, § 1, p. 391; am. 1990, ch. 6, § 1, p. 11; am. 1990, ch. 372, § 5, p. 1023; am. 1991, ch. 290, § 1, p. 749; am. 1992, ch. 81, § 7, p. 222; am. 1993, ch. 27, § 2, p. 93; am. 1994, ch. 118, § 1, p.

267; am. 1995, ch. 176, § 1, p. 658; am. 1997, ch. 203, § 1, p. 577; am. 1998, ch. 175, § 4, p. 615; am. 1998, ch. 298, § 3, p. 984; am. 1998, ch. 357, § 4, p. 1116; am. 1999, ch. 55, § 1, p. 141; am. 2000, ch. 211, § 12, p. 538; am. 2001, ch. 139, § 1, p. 500; am. 2001, ch. 171, § 1, p. 586; am. 2001, ch. 206, § 1, p. 699; am. 2002, ch. 234, § 5, p. 684; am. 2007, ch. 35, § 1, p. 81; am. 2007, ch. 73, § 2, p. 196; am. 2010, ch. 102, § 1, p. 198; am. 2011, ch. 88, § 3, p. 183; am. 2011, ch. 109, § 3, p. 280.

**STATUTORY NOTES****Cross References.**

Bear Lake, agreements with Utah for reciprocal recognition of licensing rights authorized, § 36-1003; cooperative agreements with Utah and Wyoming for development of fishing resources authorized, § 36-1005.

Form of license, § 36-301.

Honorary or temporary licenses unlawful, § 36-305.

Snake river forming Oregon, Washington boundary, fishing in restricted, § 36-1001.

**Amendments.**

This section was amended by three 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 175, § 4, substituted "(s)" for "(r)" in subsection (a).

The 1998 amendment, by ch. 298, § 3, in subsection (c), substituted game tag fees of "21.00" for "15.00"; "15.00" for "9.00"; "41.00" for "29.00" for residents; and substituted "331.00" for "325.00"; "231.00" for "225.00" for nonresidents.

The 1998 amendment, by ch. 357, § 4, in subsection (a), substituted "any person seventy (70) years of age or older who holds a senior resident combination license" for "the holder of a senior resident permit" preceding "may be issued a bear, deer or elk tag without charge".

This section was amended by three 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 139, § 1, in subsection (a) deleted "seventy (70) years of age or older" preceding "who holds a senior"; and made a minor stylistic change.

The 2001 amendment, by ch. 171 § 1, added the last sentence in subsection (a).

The 2001 amendment, by ch. 206 § 1, added subsection (m).

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 35, in subsections (e) and (f), substituted "for a fee" for "at a fee"; and in subsection (i), twice substituted "upland game bird permit" for "pheasant permit," and substituted "hunting stocked upland game birds" for "hunting pheasants."

The 2007 amendment, by ch. 73, in subsections (a) and (b), inserted "wolf" in the list of animals; and in the second sentence in subsection (c), inserted "wolf tag."

The 2010 amendment, by ch. 102, in the next-to-last sentence in subsection (c), twice inserted "or elk" and inserted "wolf."

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 88, added subsection (n).

The 2011 amendment, by ch. 109, in the first sentence in subsection (a), substituted "A resident who has obtained authorization to hunt" for "A resident who has obtained a permit to hunt"; and, in the first sentence in subsection (b), inserted "or authorization" and "36-401 or."

**Legislative Intent.**

Section 1 of S.L. 1998, ch. 298 provided: "Legislative Intent. It is the Legislature's intent that the Fish and Game Commission and the Department of Fish and Game prepare a longterm license fee adjustment proposal to provide fiscal stability to be presented to the Legislature in 1999 as provided in the statement of purpose." See S.L. 2000, ch. 211.

**Compiler's Notes.**

Following the amendment of this section by S.L. 2000, ch. 211, the phrase "upon payment of the fees provided herein", near the beginning of subsections (a) and (b), should read "upon payment of the fees provided in § 36-416."

The letters "WMA" enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 5 of S.L. 1980, ch. 339 provided that the act should take effect on and after January 1, 1981.

Section 4 of S.L. 1981, ch. 98 provided that the act should be in full force and effect January 1, 1982.

Section 3 of S.L. 1984, ch. 197 declared an emergency and made the act effective May 1, 1984. Approved April 3, 1984.

Section 3 of S.L. 1986, ch. 7 declared an emergency and provided that the act would be in full force and effect on and after the 30 days after passage and approval (March 22, 1986). Approved February 20, 1986.

Section 6 of S.L. 1990, ch. 372 provided that the act should take effect on and after January 1, 1991.

Section 3 of S.L. 1993, ch. 27 provided that

the act shall be in full force and effect on May 1, 1993.

Section 4 of S.L. 1998, ch. 298 declared an emergency. Effective on and after May 1, 1998.

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

#### Hunting by Native Americans.

Although Native Americans retained the aboriginal right to hunt on open and un-

claimed land, they were subject to state game laws while hunting on private land. *State v. Coffee*, 97 Idaho 905, 556 P.2d 1185 (1976).

## RESEARCH REFERENCES

**A.L.R.** — Validity, Construction, and Application of State Statutes Prohibiting, Limiting,

or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

**36-409A. Disabled archery provisions.** — When the commission has established a special archery only season, any individual who is otherwise qualified to participate, shall be allowed to do so with the use of a crossbow if he has a permanent disability whereby he does not have use of one (1) or both of his arms or hands.

The commission shall promulgate rules to establish a process for verifying the existence of the disability and for issuance of a free permit to qualifying individuals.

#### History.

I.C., § 36-409A, as added by 1995, ch. 366, § 1, p. 1280; am. 2008, ch. 58, § 1, p. 148.

## STATUTORY NOTES

#### Amendments.

The 2008 amendment, by ch. 58, substi-

tuted "Disabled" for "Handicapped" in the section heading.

**36-410. Steelhead trout — Anadromous salmon permits.** — No person shall fish for steelhead trout or anadromous salmon except as herein provided:

(a) Permits Required — Fee. Any person holding a valid fishing or combined fishing and hunting license of a class and kind mentioned in section 36-406 or in subsections (b) and (i) of section 36-407, Idaho Code, may purchase, in accordance with the rules promulgated by the commission, steelhead trout permits and/or anadromous salmon permits at a fee as specified in section 36-416, Idaho Code, for each kind of permit. The person to whom such permits are issued shall then be entitled to fish for and take steelhead trout and/or anadromous salmon subject to the limitations prescribed in this title and rules promulgated by the commission. Permits shall be valid only during the period of time that the corresponding basic license is valid.

(b) Unlicensed Resident. Bona fide residents of Idaho who are expressly exempt from license requirements to fish in the public waters of the state may choose one (1) of the following options:

1. Purchase and use such permits as an individual; or
2. May fish for and take steelhead trout and/or anadromous salmon without having permits therefor if accompanied by a properly licensed permit holder, provided that any such fish caught shall be included in the daily, seasonal and possession limit of the accompanying licensed permit holder.

(c) Unlicensed Nonresident Children. Unlicensed nonresident children under the age of fourteen (14) years shall not be eligible to obtain a steelhead trout or anadromous salmon permit, but may take such fish if accompanied by a holder of a valid license and permit, provided that any steelhead trout or anadromous salmon caught by such children shall be included in the daily, seasonal and possession limit of the accompanying licensed permit holder.

**History.**

I.C., § 36-410, as added by 1976, ch. 95, § 2, p. 315; am. 1986, ch. 294, § 1, p. 739; am.

1992, ch. 81, § 8, p. 222; am. 2000, ch. 211, § 13, p. 538; am. 2002, ch. 234, § 6, p. 684; am. 2010, ch. 92, § 1, p. 177.

**STATUTORY NOTES**

**Cross References.**

Resident fish and game licenses and permits, § 36-404.

steelhead trout permit or one (1) anadromous salmon permit at a fee specified."

**Amendments.**

The 2010 amendment, by ch. 92, in the first sentence in subsection (a), substituted "may purchase, in accordance with the rules promulgated by the commission, steelhead trout permits and/or anadromous salmon permits at a fee specified" for "may purchase one (1)

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

Section 3 of S.L. 1986, ch. 294 provided that the act should take effect on and after January 1, 1987.

**RESEARCH REFERENCES**

**A.L.R.** — Validity, Construction, and Application of State Statutes Prohibiting, Limiting,

or Regulating Fishing or Hunting in State by Nonresidents. 31 A.L.R.6th 523.

**36-411. Certificate of completion.** — (a) Hunter education. No hunting license shall be issued to a person born after January 1, 1975, unless the person has previously held a valid hunting license in this or another state or unless such person presents to the department of fish and game or one of its authorized license vendors, a certificate of completion in hunter education issued by the department under the hunter education program or proof that he holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association of another state or country.

(b) Archery education. On and after January 1, 1994, no person shall be issued an archery permit unless that person presents to the department a certificate of completion in archery education issued by the department, or proof that such person holds the equivalent of such a certificate obtained either in Idaho or from an authorized agency or association in another state,

or proof that such person has previously held a valid archery permit in Idaho or another state or country.

**History.**

I.C., § 36-411, as added by 1979, ch. 305, § 1, p. 827; am. 1980, ch. 190, § 1, p. 421; am. 1989, ch. 227, § 1, p. 543; am. 1991, ch. 5, § 1, p. 17; am. 1993, ch. 414, § 1, p. 1524; am. 2010, ch. 52, § 1, p. 99.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 52, added "or country" after "another state" at the end of subsections (a) and (b).

Section 2 of S.L. 1989, ch. 227 provided that the act should take effect January 1, 1990.

**Effective Dates.**

Section 2 of S.L. 1980, ch. 190 declared an emergency. Approved March 28, 1980.

**36-412. Education programs — Instructor qualifications — Fee.**

— (a) The fish and game commission shall prescribe and administer education programs in hunting and archery. Such programs shall provide instruction in the safe handling of lawful hunting equipment. The programs shall also include instruction on wildlife and natural resource conservation, good conduct and respect for the rights and property of others, and survival in the outdoors. The commission may enter into agreements with public or private agencies and individuals in carrying out the provisions of this subsection.

(b) The department of fish and game shall recruit competent volunteer instructors. The department shall provide training for the instructors in the safe handling of legal hunting equipment, conservation of wildlife and natural resources, good conduct and respect for the rights and property of others, outdoor survival, and other appropriate subjects for training instructors. Instructors shall be issued certificates and shall on a voluntary basis, give instruction in education programs as established by the department of fish and game, to all eligible applicants.

(c) The commission shall establish fees for each program not to exceed eight dollars (\$8.00) for persons who are age seventeen (17) years and under and not to exceed eight dollars (\$8.00) for persons age eighteen (18) years and older, to be assessed each individual obtaining instruction in hunter education for reimbursement for furnished materials. All students successfully completing the course of instruction shall be issued a certificate of completion in hunter safety and good hunting conduct. The department may also issue a youth hunter education graduate hunting license to students successfully completing the course or allow the student to purchase a junior hunting license at a reduced fee pursuant to rules adopted by the commission.

**History.**

I.C., § 36-412, as added by 1979, ch. 305, § 2, p. 827; am. 1991, ch. 5, § 2, p. 17; am. 1993, ch. 414, § 2, p. 1524; am. 1998, ch. 180, § 1, p. 666; am. 2002, ch. 234, § 7, p. 684.

**STATUTORY NOTES****Effective Dates.**

Section 3 of S.L. 1979, ch. 305 provided that the act should take effect January 1, 1980.

**36-412A. Education programs — Fines and forfeitures — Local shooting ranges.** — (1) Fines and forfeitures remitted for violations of fish and game laws pursuant to section 19-4705, Idaho Code, shall be used for hunter and archery education and the improvement of local shooting ranges as provided in this section.

(2) An amount not to exceed one hundred twenty-five thousand dollars (\$125,000) per year may be provided for local shooting ranges for the improvement of those ranges and their operations. No single range shall receive all of the money in any single year. The commission shall determine the amount available to distribute up to the limit provided in this section, the distributions, and the recipients. The commission shall have the authority to distribute all or none of the available fines and forfeitures in any single year.

(3) Fines and forfeitures remaining after distribution to local shooting ranges shall be provided to hunter and archery education programs.

**History.**

I.C., § 36-412A, as added by 1998, ch. 426, § 2, p. 1342; am. 2010, ch. 51, § 1, p. 99.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 51, substituted "one hundred twenty-five thousand dol-

lars (\$125,000)" for "one hundred thousand dollars (\$100,000)" in subsection (2).

**36-413. Lifetime license certificate — Fee.** — (a) The fish and game commission shall issue rules and regulations to administer a lifetime license certificate system.

(b) A lifetime license certificate may be sold to any person who qualifies as a resident or is granted resident license privileges as provided in subsection (s) of section 36-202, Idaho Code.

(c) A lifetime certificate may be obtained by a person one (1) day of age through one (1) year of age possessing the qualifications therein described upon payment of twenty-five (25) times the fee prescribed for a combined hunting and fishing license in section 36-406(a) [36-416(a)], Idaho Code, for a combined hunting and fishing license certificate; twenty-five (25) times the fee prescribed for a hunting license in section 36-406(a) [36-416(a)], Idaho Code, for a hunting license certificate; or twenty-five (25) times the fee prescribed for a fishing license in section 36-406(a) [36-416(a)], Idaho Code, for a fishing license certificate.

(d) A lifetime certificate may be obtained by a person two (2) years of age through fifty (50) years of age possessing the qualifications therein described upon payment of thirty-five (35) times the fee prescribed for a combined hunting and fishing license in section 36-406(a) [36-416(a)], Idaho Code, for a combined hunting and fishing license certificate; thirty-five (35)

times the fee prescribed for a hunting license in section 36-406(a) [36-416(a)], Idaho Code, for a hunting license certificate; or thirty-five (35) times the fee prescribed for a fishing license in section 36-406(a) [36-416(a)], Idaho Code, for a fishing license certificate.

(e) A lifetime certificate may be obtained by a person fifty-one (51) years of age or older possessing the qualifications therein described upon payment of twenty (20) times the fee prescribed for a combined hunting and fishing license in section 36-406(a) [36-416(a)], Idaho Code, for a combined hunting and fishing license certificate; twenty (20) times the fee prescribed for a hunting license in section 36-406(a) [36-416(a)], Idaho Code, for a hunting license certificate; or twenty (20) times the fee prescribed for a fishing license in section 36-406(a) [36-416(a)], Idaho Code, for a fishing license certificate.

(f) Holders of lifetime license certificates shall be subject to the provisions of title 36, Idaho Code.

(g) The director shall promptly transmit to the state treasurer all moneys received by him from the sale of lifetime license certificates and the state treasurer shall deposit all such moneys in the fish and game trust account. All such moneys shall be expended at the direction of the commission to carry out the purposes of the Idaho fish and game code or any law or regulation promulgated for the protection of wildlife, and shall be used for no other purpose.

#### History.

I.C., § 36-413, as added by 1986, ch. 52, § 6, p. 149; am. 1998, ch. 175, § 5, p. 615.

#### STATUTORY NOTES

##### Cross References.

Deposit of license fees into fish and game trust account, § 36-307.

license fees and § 36-416 was enacted with a complete table of licensing fees.

The Idaho fish and game code, referred to in subsection (g), is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as enacted by S.L. 1976, ch. 95, § 2.

#### 36-414. Migratory waterfowl validation. [Repealed.]

#### STATUTORY NOTES

##### Compiler's Notes.

This section, which comprised I.C., § 36-414, as added by 1987, ch. 173, § 1, p. 339; am. 1990, ch. 388, § 11, p. 1067; am. 1992, ch. 81, § 9, p. 222; am. 1993, ch. 327, § 18, p.

1186; am. 1995, ch. 287, § 15, p. 951; am. 1996, ch. 159, § 15, p. 502; am. 1999, ch. 32, § 2, p. 69, was repealed by S.L. 2000, ch. 211, § 14, effective May 1, 2000.

#### 36-415. Discounted tag fees. — Upon finding a biological need or public need or unsold tags, the commission is authorized to order a discount in tag fees for specific species, units, areas, zones, or gender as necessary to encourage increased tag sales, hunting or use of the resource. Notwithstanding the provisions of other law to the contrary, the discounted tag fee shall

be effective only for the time period set by the commission order, and holders of tags purchased before the discount shall not be entitled to a refund except as provided by rule.

**History.**

I.C., § 36-415, as added by 1999, ch. 39,  
§ 1, p. 76.

**36-416. Schedule of license fees. —**

(a) Sport Licenses

License	Resident	Non-Resident
Combination License	\$ 31.75	\$ 238.25
Hunting License	11.00	153.00
Fishing License	24.00	96.50
Sr. Combination License (65 and Older)	10.00	N/A
Sportsman's Pak License	108.50	N/A
Jr. Combination License	15.75	N/A
Jr. Hunting License	5.50	N/A
Jr. Mentored Hunting License	N/A	30.00
Youth Small Game License	5.50	18.25
Youth Hunter Education		
Graduate Hunting License	3.25	3.25
Jr. Fishing License	12.00	20.00
Disabled Combination License	3.25	3.25
Disabled Fishing License	3.25	N/A
Military Furlough Combination License	15.75	N/A
Military Furlough Fishing License	15.75	N/A
Small Game Hunting License	N/A	96.00
3 Day Small Game Hunting License	N/A	33.75
Daily Fishing (1st-day) License	9.75	11.00
Consecutive Day Fishing License	5.00	6.00
3 Day Fishing with Salmon/Steelhead Permit	N/A	35.75
Nongame Hunting License	N/A	33.75

For purposes of this subsection, disabled combination licenses provided to nonresidents shall be limited to nonresident disabled American veterans participating in a hunt in association with a qualified organization. "Qualified organization," as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code.

(b) Sport Tags

Deer Tag	\$ 18.00	\$ 300.00
Controlled Hunt Deer Tag	18.00	300.00
Jr. or Sr. or Disabled American Veteran		
Deer Tag	9.00	9.00
Jr. Mentored Deer Tag	N/A	22.00
Elk A Tag	29.00	415.00
Elk B Tag	29.00	415.00
Controlled Hunt Elk Tag	29.00	415.00
Jr. or Sr. or Disabled American Veteran		
Elk Tag	14.75	14.75
Jr. Mentored Elk Tag	N/A	38.00

Bear Tag	9.75	184.25
Jr. or Sr. or Disabled American Veteran		
Bear Tag	5.00	5.00
Jr. Mentored Bear Tag	N/A	22.00
Turkey Tag	18.00	78.25
Jr. or Sr. or Disabled American Veteran		
Turkey Tag	9.00	9.00
Jr. Mentored Turkey Tag	N/A	18.00
Mountain Lion Tag	9.75	184.25
Gray Wolf Tag	9.75	184.25
Antelope Tag	29.50	310.00
Moose Tag	165.00	2,100.00
Sheep Tag	165.00	2,100.00
Goat Tag	165.00	2,100.00
Sandhill Crane Tag	18.00	65.75

For purposes of this subsection, Jr. or Sr. or disabled American veteran tags provided to nonresidents shall be limited to nonresident disabled American veterans participating in a hunt in association with a qualified organization. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

(c) Sport Permits

Bear Baiting Permit	\$ 11.00	\$ 30.00
Hound Hunter Permit	11.00	168.00
WMA Upland Game Bird Permit	22.00	50.00
Archery Permit	16.50	18.25
Muzzleloader Permit	16.50	18.25
Salmon Permit	11.00	24.00
Steelhead Permit	11.00	24.00
Federal Migratory Bird Harvest Info. Permit	0.00	3.00
Disabled Archery Permit	0.00	0.00
2-Pole Fishing Permit	12.00	13.75
Turkey Controlled Hunt Permit	6.00	6.00
Sage/Sharptail Grouse Permit	3.00	3.00
Disabled Hunt Motor Vehicle Permit	0.00	0.00

(d) Commercial Licenses and Permits

Raptor Captive Breeding Permit	\$ 65.75	\$ 78.75
Falconry Permit	27.25	N/A
Falconry Capture Permit	N/A	168.00
Jr. Trapping License	5.50	N/A
Trapping License	25.00	300.00
Taxidermist-Fur Buyer License		
5 year license	175.00	N/A
1 year license	38.25	168.25
Shooting Preserve Permit	329.75	N/A
Commercial Wildlife Farm License	137.50	N/A
Commercial Fishing License	110.00	265.00
Wholesale Steelhead License	165.00	198.25
Retail Steelhead Trout Buyer's License	33.00	39.25

(e) Commercial Tags

Bobcat Tag	\$ 3.00	\$ 3.00
Otter Tag	3.00	3.00
Net Tag	55.00	65.75
Crayfish/Minnow Tag	1.25	3.00
(f) Miscellaneous-Other Licenses		
Duplicate License	\$ 5.50	\$ 6.50
Shooting Preserve License	11.00	22.00
Captive Wolf License	22.00	N/A
(g) Miscellaneous-Other Tags		
Duplicate Tag	\$ 5.50	\$ 6.50
Wild Bird Shooting Preserve Tag	5.50	6.50
(h) Miscellaneous-Other Permits-Points-Fees		
Falconry In-State Transfer Permit	\$ 5.50	\$ N/A
Falconry Meet Permit	N/A	26.25
Rehab Permit	3.00	3.00
Educational Fishing Permit	0.00	0.00
Live Fish Importation Permit	3.00	3.00
Sport Dog and Falconry Training Permit	3.00	3.00
Wildlife Transport Permit	3.00	3.00
Scientific Collection Permit	50.00	50.00
Private Park Permit	21.75	26.25
Wildlife Import Permit	21.75	26.25
Wildlife Export Permit	11.00	13.25
Wildlife Release Permit	11.00	13.25
Captive Wildlife Permit	21.75	26.25
Fishing Tournament Permit	21.75	25.00
Dog Field Trial Permit	33.00	40.00
Live Fish Transport Permit	21.75	26.25
Controlled Hunt Application Fee	4.50	13.00
Fee for Application for the Purchase of Controlled Hunt Bonus or Preference Points	4.50	4.50
Nursing Home Fishing Permit	33.00	N/A

**History.**

I.C., § 36-416, as added by 2000, ch. 211, § 15, p. 538; am. 2001, ch. 125, § 1, p. 444; am. 2001, ch. 206, § 2, p. 699; am. 2002, ch. 234, § 8, p. 684; am. 2004, ch. 236, § 1, p.

698; am. 2005, ch. 379, § 3, p. 1234; am. 2007, ch. 35, § 2, p. 81; am. 2007, ch. 73, § 3, p. 196; am. 2009, ch. 201, § 2, p. 643; am. 2010, ch. 94, § 1, p. 179; am. 2011, ch. 88, § 4, p. 183.

**STATUTORY NOTES****Amendments.**

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 125, § 1, in subsection (h), deleted "private pond permit".

The 2001 amendment, by ch. 206, § 2, in subsection (h), added "Nursing Home Fishing Permit".

This section was amended by two 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 35, substituted "WMA Upland Game Bird Permit" for "WMA Pheasant Permit" in subsection (c).

The 2007 amendment, by ch. 73, added the entry for "Gray Wolf Tag" in subsection (b).

The 2009 amendment, by ch. 201, rewrote the section, increasing most non-resident fees and adding several new tags and permits.

The 2010 amendment, by ch. 94, added the entry for "3 Day Small Game Hunting License" in subsection (a).

The 2011 amendment, by ch. 88, deleted the subsection (1) designation; in subsection (a), substituted "3.25" for "N/A" in the second column of the table of "Disabled Combination License", and add the undesignated paragraph following that table; and in the second column of subsection (b), substituted "9.00" for "N/A" of "Jr. or Sr. or Disabled American Veteran Deer Tag", "14.75" for "N/A" of "Jr. or Sr. or Disabled American Veteran Elk Tag", "5.00" for "N/A" of "Jr. or Sr. or Disabled American Veteran Bear Tag", "9.00" for "N/A" of "Jr. or Sr. or Disabled American Veteran Turkey Tag", and added the undesignated paragraph following that table.

#### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

#### **Legislative Intent.**

Section 5 of S.L. 2009, ch. 201 provided: "Legislative Intent. The legislature recognizes a benefit to the public from elk and mule deer population monitoring to assess abundance, sex ratios and juvenile production and from studies to monitor survival and mortality factors of elk, deer and moose. It is the intent of the Legislature that a Department of Fish and Game continue to monitor and study populations of elk, deer and moose, including predation by wolves, to provide this beneficial information."

#### **Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

Section 6 of S.L. 2009, ch. 201 declared an emergency effective April 15, 2009. Approved April 22, 2009.

**36-417. Voluntary donation — Idaho hunters feeding the hungry, inc.** — An applicant for a resident or nonresident license as provided for in section 36-416, Idaho Code, may make a voluntary donation of one dollar (\$1.00) or more to support the activities of Idaho hunters feeding the hungry, inc., an Idaho nonprofit corporation, in conjunction with his license application. The department shall include a checkoff form to allow an applicant to designate a donation and shall transfer all such funds, less administrative costs associated with the collection of donations, received to Idaho hunters feeding the hungry, inc. on or before July 1 of each year.

#### **History.**

I.C., § 36-417, as added by 2005, ch. 211, § 1, p. 634.

#### **STATUTORY NOTES**

#### **Effective Dates.**

Section 2 of S.L. 2005, ch. 211 provided that

the act should take effect on and after January 1, 2006.

## **CHAPTER 5**

# **RESTRICTIONS ON POSSESSION, TRANSPORTATION, SALE AND USE OF WILDLIFE**

#### **SECTION.**

- 36-501. Sale and purchase of wildlife — Restrictions — Exceptions.
- 36-502. Possession — Transportation — Shipment of wildlife — Restrictions — Exceptions — Release of captured wildlife.
- 36-503. Storage of wildlife — Processing —

#### **SECTION.**

- Restrictions — Exceptions — Records required.
- 36-504. Wildlife taken in violation of other laws — Violations.
- 36-505. Suspension of hunting, fishing or trapping license for failure to pay underlying infraction penalty — Appeal.

**36-501. Sale and purchase of wildlife — Restrictions — Exceptions.** — No person shall sell or buy any species of wildlife or parts thereof except as hereinafter provided.

(a) Sale of Unprotected Wildlife. The sale of legally taken species of wildlife classified as unprotected by law shall be lawful.

(b) Sale of Game Animals. The sale of legally taken hides, horns, or heads of game animals, when detached from the carcass, and mounted wildlife, where sale is not specifically prohibited by federal statute or regulation or state statutes, shall be lawful only when the wildlife to be sold is accompanied by a statement showing that the animals were lawfully taken. It shall be lawful to possess or sell naturally shed antlers or horns of deer, elk, moose, antelope and mountain goat, and antlers or horns of deer, elk, moose, antelope and mountain goat which have died from natural causes.

(c) Sale of Furbearers. The sale of pelts and parts of furbearers when legally taken shall be lawful.

(d) Sale of Seized Wildlife. The sale and purchase of court confiscated, abandoned, or unclaimed wildlife shall be lawful when made in accordance with the provisions of section 36-1304, Idaho Code.

(e) Sale of Commercially Raised or Harvested Wildlife. The sale of wildlife legally raised or harvested commercially by properly licensed commercial operations, if required to be licensed, shall be lawful except as provided by rules promulgated pursuant to section 36-104(b)6., Idaho Code. The provisions of this section shall not apply to domestic fur-bearing animals as defined in chapter 30, title 25, Idaho Code.

(f) Sale of Steelhead Trout.

1. Any person holding a wholesale steelhead trout buyer's license may purchase or sell steelhead trout in the state of Idaho that have been taken by Indian fishermen lawfully exercising fishing rights reserved by federal statute, treaty or executive order, provided that the Indian fisherman is an enrolled member of the tribe holding such rights and the code of such tribe authorizes such sales. A wholesale license is necessary to purchase steelhead trout directly from Indian fishermen or from any other seller whose principal place of business is located outside of the state of Idaho.

2. Any person holding a retail steelhead trout buyer's license may purchase steelhead trout in the state of Idaho from an Idaho licensed wholesale steelhead trout buyer, or from any Indian fisherman lawfully exercising fishing rights authorized by federal statute, treaty, or executive order. A licensed retail steelhead trout buyer may sell steelhead trout directly to the consumer or to an establishment that prepares steelhead trout for consumption.

3. Establishments that prepare steelhead trout for consumption must possess a wholesale or retail steelhead trout buyer's license; however, these licensed establishments may purchase steelhead trout from either wholesale or retail licensed steelhead trout buyers.

4. The fee for a wholesale license shall be as specified in section 36-416, Idaho Code, per year. The fee for a retail license shall be as specified in section 36-416, Idaho Code, per year. These licenses shall expire December 31 of the year for which they are valid.

5. No license is required for any person purchasing steelhead trout for personal consumption from a licensed wholesale or retail steelhead trout

buyer or from an Indian fisherman lawfully exercising fishing rights authorized by federal statute, treaty, executive order, or tribal code or regulation.

6. Purchases or sales under this section shall be made under conditions and reporting requirements prescribed by commission regulation, provided that said conditions and reporting requirements are limited to those necessary to identify the source of steelhead purchased.

Any person violating the provisions of this subsection shall be found guilty as provided in section 36-1401, Idaho Code, and shall be punished as set forth in section 36-1402, Idaho Code.

(g) Commission May Permit Sales. The commission may, by rule, permit the sale of other parts of wildlife when such sale will not injuriously affect the species permitted.

**History.**

I.C. § 36-501, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 92, § 2, p. 171; am. 1983, ch. 55, § 1, p. 131; am. 1985, ch. 188, § 1, p. 484; am. 1987, ch. 203, § 1, p. 429; am. 1989, ch. 373, § 1, p. 941; am. 1991, ch. 49,

§ 1, p. 87; am. 1991, ch. 129, § 1, p. 283; am. 1991, ch. 289, § 1, p. 747; am. 1992, ch. 81, § 10, p. 222; am. 1992, ch. 172, § 3, p. 536; am. 1993, ch. 79, § 1, p. 206; am. 2000, ch. 211, § 16, p. 538.

#### STATUTORY NOTES

**Cross References.**

Domestic fur-bearing animals defined, § 25-3001.

Penal section of fish and game law, § 36-1402.

**Prior Laws.**

Former title 36, chapter 5, comprised of

§§ 36-501 to 36-508, was repealed by S.L. 1976, ch. 95, § 1.

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

#### JUDICIAL DECISIONS

**Cited in:** State v. Dolan, 11 Idaho 256, 81 P. 640 (1905).

#### DECISIONS UNDER PRIOR LAW

##### ANALYSIS

Authority to seize.

Regulation under police power.

**Authority to Seize.**

Under S.L. 1905, p. 257, § 9, making it a misdemeanor for any person to have in his possession carcasses, heads or antlers of game animals in excess of the number provided in said act, game warden (now director) has authority to take possession of game animals, or any part thereof, from any person who has possession thereof in excess of the number prescribed in the statute, irrespective of the question as to where the animals were

killed. Binkley v. Stephens, 16 Idaho 560, 102 P. 10 (1909).

**Regulation Under Police Power.**

Ownership acquired in game or fish is not such ownership as one acquires in chattels or lands, but merely qualified ownership; and possession of fish and game is at all times subject to such regulation as legislature may make, subject to constitutional provisions. Sherwood v. Stephens, 13 Idaho 399, 90 P. 345 (1907).

**RESEARCH REFERENCES**

**A.L.R.** — Sale, validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

**36-502. Possession — Transportation — Shipment of wildlife — Restrictions — Exceptions — Release of captured wildlife.** — No person shall possess, transport or ship in any manner, or accept for transportation or shipment any wildlife except as hereinafter provided.

(a) **Possession and Transportation.**

1. The possession and transportation of any legally taken wildlife shall be lawful when the same is in the possession of or is being transported by the taker of said wildlife and is accompanied by the appropriate licenses, tags, and/or permits attached and/or validated in the manner prescribed by the provisions of sections 36-409(d) and 36-410(a), Idaho Code.
2. Possession or transportation of any legally taken wildlife by any person other than the taker shall be lawful when such wildlife is accompanied by a written statement prepared and signed by the taker showing the number, kind, and date taken and the name, address and license number of the taker and other such information as may be specified by the commission. In addition to such statements said wildlife shall be accompanied by the appropriate validated tag therefor and/or such permits as may be required under the provisions of this title except, for anadromous fish, the permit need not accompany the fish so long as the permit number is written on the proxy statement. Provided, however, that no person may lawfully claim, be granted or assume ownership of more game animals, game birds, or game fish taken within the state than allowed by possession limits established by the commission.
3. It shall be lawful for a person to ship or a common carrier to accept for shipment any legally taken wildlife provided that all packages containing such wildlife shall be plainly labeled designating numbers, sex and species of wildlife contained therein and the name and address of the consignor and consignee.
4. No person shall give another person wildlife to possess or transport unless they also give the transporter a proxy statement as provided in subsection 2. of this section.

(b) **Unlawful Possession.** No person shall have in his possession any wildlife or parts thereof protected by the provisions of this title and the taking or killing of which is unlawful.

(c) **Release of Captured Wildlife.** Any native wildlife, classified as predatory wildlife or unprotected wildlife, captured as the result of activity deleterious to human activity, may be released on private lands in the county of origin or on private lands in adjacent counties to the county of origin, with the written consent of the landowner of the property where the release occurs. The written consent shall include the date and the number of each species to be released.

**History.**

I.C., § 36-502, as added by 1976, ch. 95, § 2, p. 315; am. 1990, ch. 315, § 1, p. 860; am.

1992, ch. 81, § 11, p. 222; am. 2000, ch. 211, § 17, p. 538; am. 2010, ch. 83, § 1, p. 162.

**STATUTORY NOTES****Cross References.**

Hunting licenses, § 36-401 et seq.

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

Private ponds, sale of fish from, § 36-707.

**Amendments.**

The 2010 amendment, by ch. 83, in the

section heading, added "release of captured wildlife"; and added subsection (c).

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**JUDICIAL DECISIONS****ANALYSIS**

Appropriate licenses.

Offenses.

Statute of limitations.

**Appropriate Licenses.**

The evidence clearly established that — his intent notwithstanding — a defendant charged with wrongful possession of an Idaho resident hunting license and with killing an elk without a valid license did not reside within the state for the required six-month period before he obtained an Idaho resident hunting license. State v. Wimer, 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990).

**Offenses.**

The offenses of wrongful possession of an Idaho resident hunting license and of unlawfully taking big game involve separate acts or

omissions and, therefore, double punishment was not barred. State v. Wimer, 118 Idaho 732, 800 P.2d 128 (Ct. App. 1990).

**Statute of Limitations.**

Statute of limitations does not begin to run until a defendant ceases to possess the wildlife parts; the legislature clearly indicated an intent to make the crime a continuing offense. State v. Maidwell, 137 Idaho 424, 50 P.3d 439 (2002).

**Cited in:** State v. Cutler, 109 Idaho 448, 708 P.2d 853 (1985).

**RESEARCH REFERENCES**

**A.L.R.** — Sale, validity and construction of statute prohibiting sale within state of skin or

body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

**36-503. Storage of wildlife — Processing — Restrictions — Exceptions — Records required.** — No person shall store or cause to be stored or leave for storage, cleaning or processing any wildlife or for any person owning or operating any locker, storage or processing business, to accept any wildlife for storage, cleaning or processing except as hereinafter provided.

(a) **Owner May Store.** Any person who may be legally in possession of wildlife may store said wildlife for such time as he may desire or have such wildlife cleaned or processed provided the appropriate, properly validated tags, permits or statements, required by this title, shall accompany said wildlife.

(b) **Storage Facilities — Records Required.** Any person may accept for storage, cleaning or processing any legally taken wildlife provided:

1. Such wildlife is accompanied by the appropriate properly validated tags, permits or statements required by this title.
2. A written record is made of all such wildlife received showing numbers,

species, and sex, when discernable, as well as the name, address and fish or game license class and number of the owner of said wildlife. Such record shall be available to the director for inspection upon request.

3. The operator of such storage facility shall, upon request of the director, provide full information concerning all tenants and all persons having access to lockers, lock boxes, and storage compartments leased by him.

**History.**

I.C., § 36-503, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1992, ch. 81, § 12, p. 222.

**STATUTORY NOTES**

**Cross References.**

Searches and seizures, §§ 36-1302, 36-1303.

**RESEARCH REFERENCES**

**A.L.R.** — Sale, validity and construction of statute prohibiting sale within state of skin or body of specified wild animals or of the animal itself. 44 A.L.R.3d 1008.

**36-504. Wildlife taken in violation of other laws — Violations.** — (a) It shall be unlawful for any person to import, export, transport, sell, receive, acquire, purchase or possess any wildlife, as defined in section 36-202, Idaho Code, that is taken, possessed or sold on or after July 1, 1991, in violation of any law or regulation of the United States, any Indian law or regulation, or any law or regulation of any state other than Idaho, or laws or regulations of a foreign country.

(b) Each violation shall be a separate offense and the offense shall be deemed to have been committed not only in the location where the violation first occurred, but also in any location in which the defendant may have been in possession of such wildlife within the state of Idaho.

(c) All such wildlife shall be subject to the operation and effect of the laws of the state of Idaho to the same extent and in the same manner as though such wildlife had been produced in Idaho.

(d) Any person who violates the provisions of this section shall be punished in accordance with the provisions of chapter 14, title 36, Idaho Code.

**History.**

I.C., § 36-504, as added by 1991, ch. 140,  
§ 1, p. 332.

**36-505. Suspension of hunting, fishing or trapping license for failure to pay underlying infraction penalty — Appeal.** — (1) The department shall immediately suspend the hunting, fishing or trapping license and the hunting, fishing or trapping privileges of any person upon receiving notice from any court of the state that a person has failed to pay the penalty for a fish and game infraction judgment. The notice may be sent to the department by any court which shall certify that a judgment for an infraction violation has been entered against the person and that he has

failed to pay the penalty after notice and hearing, or opportunity for hearing, as prescribed by rule of the supreme court.

(2) The suspension of privileges under this section shall continue from notice of suspension by the department until the penalty has been paid. The person shall not be eligible to exercise hunting, fishing or trapping privileges or purchase a new hunting, fishing or trapping license until the penalty has been paid to the county in which judgment was entered. The department shall notify the person by registered mail of the suspension of his hunting, fishing or trapping privileges. No hearing shall be required regarding the suspension of privileges pursuant to this section.

(3) Any person hunting, fishing or trapping while such privileges are suspended under the provisions of this section, shall be in violation of the provisions of title 36, Idaho Code, prohibiting hunting, fishing or trapping without a valid license.

(4) Any person whose hunting, fishing or trapping license has been suspended under the provisions of this section may appeal to the district court in the county where the infraction judgment was entered within the time and in the manner provided for criminal appeals from the magistrates division to the district court. The appeal shall be expedited as provided by rule of the supreme court. If the district court finds that the notice of nonpayment of the infraction penalty should not have been sent to the department for suspension of the hunting, fishing or trapping license, the district court shall order the license reinstated by the department. The department upon receipt of a copy of such order shall reinstate the person's license.

#### History.

I.C., § 36-505, as added by 1991, ch. 222,  
§ 1, p. 531.

## CHAPTER 6

### COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE

#### SECTION.

36-601. Taxidermist and fur buyer's license required.  
36-602. License fees — Expiration.  
36-603. Records.

#### SECTION.

36-604. Penalties for failure to keep record.  
36-605. Unlicensed traffic — Penalty.  
36-606. Confiscation of wildlife — Proof of ownership required.

**36-601. Taxidermist and fur buyer's license required.** — (1) Any person who at any time within the state of Idaho desires to mount, preserve or prepare for preservation any of the dead bodies of any wildlife or any part thereof not personally taken by him in compliance with the provisions of this title, or who engages in the business of buying raw black bear skins, raw cougar skins or parts of black bears or cougars, or the raw hides, skins, or pelts of any of the fur bearers of this state must obtain a taxidermist and fur buyer's license.

(2) Taxidermist and fur buyer's licenses shall be obtained from the director for a fee and subject to the limitations of this chapter.

**History.**

I.C., § 36-601, as added by 1976, ch. 95,

§ 2, p. 315; am. 1993, ch. 129, § 1, p. 324; am. 2000, ch. 211, § 18, p. 538.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

**Prior Laws.**

Former title 36, chapter 6, comprised of §§ 36-601 to 36-605, was repealed by S.L. 1976, ch. 95, § 1.

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-602. License fees — Expiration.** — (a) Resident Taxidermist and Fur Buyer's License. A fee as specified in section 36-416, Idaho Code, shall be charged for a resident taxidermist and fur buyer's license.

(b) Nonresident Taxidermist and Fur Buyer's License. Nonresidents shall pay an amount equal to that charged Idaho residents in the state of the applicant for the license. In cases where the state of the applicant requires more than one (1) license, the cost shall be the total of all licenses required of an Idaho resident to engage in similar activities in the state of the applicant. In no case shall this amount be less than the fee as specified in section 36-416, Idaho Code. The department shall promulgate rules implementing the provisions of this section.

(c) The expiration date for taxidermist and fur buyer's licenses shall be June 30 of the fifth year next following the date of issuance for five (5) year licenses and June 30 next following the date of issuance for one (1) year licenses.

**History.**

I.C., § 36-602, as added by 1976, ch. 95, § 2, p. 315; am. 1994, ch. 341, § 1, p. 1077;

am. 1994, ch. 399, § 1, p. 1262; am. 2000, ch. 211, § 19, p. 538; am. 2005, ch. 379, § 1, p. 1234.

**STATUTORY NOTES****Amendments.**

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 341, § 1, in the present subsection (d), substituted the present two sentences for one which read "A fee of twenty dollars (\$20.00) shall be charged for a nonresident fur buyers license".

The 1994 amendment, by ch. 399, § 1, in subsection (a), added the heading "Resident

Taxidermist License" and inserted "resident" preceding "taxidermist license"; added the present subsection (b); and redesignated former subsections (b), (c) and (d) as subsections (c), (d) and (e).

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-603. Records.** — (1) The department may require any person licensed under the provisions of this chapter to keep a record for two (2) years last past of wildlife received for mounting or preserving, fur bearers purchased or raw black bear skins, raw cougar skins or parts of black bears or cougars purchased. Records may be written or may be retained on media other than paper, provided that the form or medium complies with the standards set forth in section 9-328, Idaho Code. The record shall be made upon a form provided by the department which sets forth such information as may be required by the director and shall be subject to his inspection at

any time. In addition, the department may require licensees to submit forms or records, as determined by the department, to the department relating to the purchase of black bears and cougars, skins, or parts thereof.

(2) Provided however, a commercial tannery receiving wildlife from a licensed taxidermist or fur buyer, shall satisfy all recordkeeping requirements by recording the license numbers of such taxidermist or fur buyer, and recording tag numbers of any attached tags required by law. This provision shall not apply in the event a commercial tannery receives wildlife from a taxidermist or fur buyer from a state other than the state of Idaho, and the taxidermist or fur buyer is not required to be licensed in that state, in which case the tannery shall record the date received, the name, address and telephone number of the individual the wildlife was received from, and tag numbers of any attached tags required by law in the state of origin, the name and number of species received and the approximate date killed. Information so recorded shall be retained for a period of two (2) years.

**History.**

I.C., § 36-603, as added by 1976, ch. 95, § 2, p. 315; am. 1993, ch. 78, § 1, p. 206; am.

2000, ch. 211, § 20, p. 538; am. 2010, ch. 85,

§ 1, p. 164; am. 2011, ch. 252, § 1, p. 695.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 85, in the first sentence, added "The department may require," substituted "to keep a record" for "shall keep a record," and added "or raw black bear skins, raw cougar skins or parts of black bears or cougars purchased"; and added the last sentence.

The 2011 amendment, by ch. 252, added the subsection (1) designation to the existing pro-

visions of the section and added subsection (2).

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

Section 3 of S.L. 2011, ch. 252 declared an emergency. Approved April 8, 2011.

**36-604. Penalties for failure to keep record.** — No person shall fail to keep a complete written record, or any record which meets the standards set forth in section 9-328, Idaho Code, as required by this chapter and/or related commission regulations or commit any falsification, omission or alterations. In addition to any other penalties, such acts shall be grounds for the revocation of any license issued pursuant to the provisions of this chapter for a period of not to exceed twelve (12) months.

**History.**

I.C., § 36-604, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 13, p. 222; am.

1993, ch. 78, § 2, p. 206.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

**36-605. Unlicensed traffic — Penalty.** — No person shall engage in or conduct a business as hereinbefore provided without first having obtained a

license as specified herein, or continue in such business after the revocation of such license.

**History.**

I.C., § 36-605, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 14, p. 222.

**36-606. Confiscation of wildlife — Proof of ownership required.**  
— (1) director is hereby authorized to seize and confiscate any wildlife or the skins, hides, pelts, horns or antlers or other portions thereof in the possession of any fur buyer or taxidermist, licensed or unlicensed, unless the person having same is able to produce satisfactory record of lawful origin and proof of ownership.

(2) Compliance with record requirements as provided in section 36-603, Idaho Code, shall constitute satisfactory record of lawful origin and proof of ownership requirements as provided in subsection (1) of this section.

**History.**

I.C., § 36-606, as added by 1976, ch. 95, § 2, p. 315; am. 2011, ch. 252, § 2, p. 695.

**STATUTORY NOTES****Cross References.**

Confiscation and sale of game, § 36-1304.  
Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

subsection (1) designation to the existing provisions of the section and added subsection (2).

**Amendments.**

The 2011 amendment, by ch. 252, added the

**Effective Dates.**

Section 3 of S.L. 2011, ch. 252 declared an emergency. Approved April 8, 2011.

**CHAPTER 7****CAPTIVE WILDLIFE****SECTION.**

- 36-701. Wildlife held captive without license or permit unlawful — Exceptions.  
36-702. Commercial fish facilities — Restrictions — License. [Repealed.]  
36-703. Commercial wildlife farms — Restrictions — License.  
36-704. Propagation of publicly owned wildlife prohibited.  
36-705. Stealing from authorized hatcheries — Farms.  
36-706. Private parks and ponds — Noncommercial — Permit required.  
36-707. Unlawful to maintain, sell or purchase wildlife from private parks or ponds.  
36-708. Humane treatment — Commission authorized to make rules.  
36-709. Reasonable inspection — Notice of violation — Required records.

**SECTION.**

- 36-710. Penalty.  
36-711. Regulation of domestic fur-bearing animals and domestic cervidae.  
36-712. Tattooing of wolves — When required.  
36-713. Records.  
36-714. Compensation for damage caused by animal held in captivity — Exceptions.  
36-715. Wolves — Transition — Authorities and duties of the office of species conservation — Fish and game commission — Department of fish and game.  
36-716. Establishment of a grizzly bear management oversight committee. [Null and void.]

**36-701. Wildlife held captive without license or permit unlawful — Exceptions.** — (a) No person shall engage in any propagation or hold in

captivity any species of big game animal found wild in this state, unless the person has been issued a license or permit by the director as hereinafter provided.

(b) All other species of mammals, birds or reptiles that are found in the wild in this state and are not species of special concern or threatened and endangered species, may be held in captivity without permit so long as the possessor retains proof that such wildlife was lawfully obtained. Such proof shall be maintained and presented to department representatives in accordance with section 36-709, Idaho Code.

(c) Exceptions.

1. No such license or permit shall be required of any municipal, county, state or other publicly owned zoo or wildlife exhibit or of any traveling circus, menagerie or trained act of wild animals not permanently located within the state of Idaho nor of any bona fide pet store displaying lawfully acquired wildlife for sale nor of any fur farm regulated and inspected pursuant to chapter 30, title 25, Idaho Code, nor of any domestic cervidae farm regulated and inspected pursuant to chapter 37, title 25, Idaho Code.
2. Except for the provisions of subsection (d) of this section and section 36-709, Idaho Code, relating to inspection and records of same, nothing in this chapter shall be so construed as to apply to any exotic wildlife, or domestic fur farm operated under the provisions of title 25, Idaho Code, or any tropical fish or other aquaria or ornamental fish which the commission determines do not pose a threat to native fish if released into the public waters of the state.
3. Except for the provisions of section 36-709(b), Idaho Code, relating to inspection of facilities, nothing in this chapter shall be so construed as to apply to any domestic cervidae farm.

(d) Wildlife Import — Export — Release Permits — Fees. No person shall import into this state or export out of this state or release in the wild any species of wildlife except by permit issued by the director and in accordance with rules promulgated by the commission. The fee per occurrence for each permit shall be as specified in section 36-416, Idaho Code. No fee shall be charged for a department benefit permit.

**History.**

I.C., § 36-701, as added by 1976, ch. 95, § 2, p. 315; am. 1990, ch. 282, § 1, p. 788; am. 1992, ch. 81, § 15, p. 222; am. 1994, ch. 73, § 2, p. 151; am. 2000, ch. 211, § 21, p. 538; am. 2004, ch. 182, § 8, p. 569.

**STATUTORY NOTES**

**Prior Laws.**

Former title 36, chapter 7, comprised of §§ 36-701 to 36-708, was repealed by S.L. 1976, ch. 95, § 1.

emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an

**36-702. Commercial fish facilities — Restrictions — License. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-702, as added by 1976, ch. 95, § 2, p. 315; am.

1979, ch. 85, § 1, p. 206, was repealed by S.L.

1992, ch. 273, § 2. See § 22-4601 et seq.

**36-703. Commercial wildlife farms — Restrictions — License. —**  
No person shall obtain, possess, preserve, or propagate any species of big game animals found wild in this state for the purpose of selling the same unless he has first secured a commercial wildlife farm license from the director.

(a) **License Provisions.** Such license may be issued by the director upon his finding that:

1. Such commercial wildlife farm is located entirely on private property owned or leased by the applicant.
2. Said farm is constructed so as not to contain any land where wild big game animals naturally abound.
3. Said farm is so enclosed as to prevent escape of big game commercial farm animals therefrom and prevent entry thereon of the same species of publicly owned big game animals.
4. The application for such license is made upon a form provided by the department which sets forth such information as may be required by the director.
5. The property boundaries are posted as being a commercial wildlife farm in at least three (3) separate, conspicuous places in addition to all entrance roadways.
6. The approved application is accompanied by a license fee as specified in section 36-416, Idaho Code.

(b) **Separate Locations to Be Licensed.** A license must be had for each and every separate location. Said license shall expire June 30 in each year.

(c) **Records of Transactions Required.** A current record shall be made by the licensee of each and every sale, purchase or shipment and such records shall be kept for two (2) years and shall be subject to inspection by the director upon his request.

(d) **Receipt Required.** A receipt shall be issued to each purchaser identifying the wildlife farm source and specifying the number and kinds of animals and the date of sale.

**History.**

I.C., § 36-703, as added by 1976, ch. 95, § 2, p. 315; am. 1990, ch. 282, § 2, p. 788; am.

2000, ch. 211, § 22, p. 538.

**STATUTORY NOTES****Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be

in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-704. Propagation of publicly owned wildlife prohibited.** — No person shall capture or possess any wildlife, owned or held in trust by the state, for any purpose, except as otherwise provided in this title or by commission regulation promulgated pursuant hereto.

**History.**

I.C., § 36-704, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1992, ch. 81, § 16, p. 222.

**36-705. Stealing from authorized hatcheries — Farms.** — It is unlawful for any unauthorized person to take or carry away any fish or wild animal or wild bird from any county, state, federal or private fish hatchery, fish trap, fish holding pond, or wildlife farm authorized to operate in this state under provisions of this title.

**History.**

I.C., § 36-705, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1979, ch. 85, § 2, p. 206.

**STATUTORY NOTES**

**Cross References.**

Maintenance of fish hatcheries, §§ 36-104,      Penalty for felony generally, § 18-112; for  
36-106.      misdemeanor under fish and game law, § 36-  
1402.

**36-706. Private parks and ponds — Noncommercial — Permit required.** — No person shall establish and maintain a private park or pond on premises owned or leased by him and obtain, possess, transport, propagate and process for his own personal pleasure and use any fish approved by the commission, or any big game animals found wild in this state unless he has first obtained a permit from the director.

(a) **Permit Requirements.** Such permit may be issued by the director upon his finding that:

1. Such private park or pond is not constructed in or across any natural stream bed, lake, or other watercourse containing wild fish, or on lands where wildlife abounds, except when it has been determined by the commission that the water flow and volume of wildlife concerned in such proposed private ponds, waters or parks are not a significant part of the wildlife resource of the state.
2. The private park or pond is located entirely on private property owned or leased by the applicant.
3. Any dam constructed to divert water into such private pond meets all requirements as provided in section 36-906(a), Idaho Code.
4. All inlets to such private pond are screened at the point of diversion as provided in section 36-906(b), Idaho Code, to prevent the entrance of wild fish into the private pond.
5. The application for such permit is made upon a form provided by the department which sets forth such information as may be required by the director.
6. The lands proposed for use as a park are so fenced as to prevent the escape of private wildlife therefrom and prevent the entry thereon of publicly owned big game animals.

7. Said park or pond shall be posted in three (3) separate conspicuous places and all entrance roads.

(b) Separate Locations — Permits Required. Such a park or pond permit must be had for each and every location. A park permit may be had upon payment of a fee as specified in section 36-416, Idaho Code. Said permit shall expire June 30 in each year. A pond permit shall expire on June 30 of the fifth fiscal year after the date of issue.

(c) Live Fish Transportation Permit. The commission may, under rules as it may prescribe, issue a live fish transportation permit. The permit may be had upon payment of a fee as specified in section 36-416, Idaho Code. No fee shall be charged for a department benefit permit.

**History.**

I.C., § 36-706, as added by 1976, ch. 95, § 2, p. 444; am. 2003, ch. 13, § 1, p. 30.  
§ 2, p. 315; am. 1990, ch. 282, § 3, p. 788; am.

2000, ch. 211, § 23, p. 538; am. 2001, ch. 125,

**STATUTORY NOTES****Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency. Approved April 5, 2000.

**36-707. Unlawful to maintain, sell or purchase wildlife from private parks or ponds.** — No person shall maintain a private park or pond without having a valid permit, or to sell or purchase any fish or big game animals found wild in this state which is possessed or propagated in such private park or pond. No person shall trespass upon a private park or pond posted in accordance with this chapter.

**History.**

I.C., § 36-707, as added by 1976, ch. 95, § 2, p. 315; am. 1990, ch. 282, § 4, p. 788; am.

1992, ch. 81, § 17, p. 222.

**36-708. Humane treatment — Commission authorized to make rules.** — The commission is hereby authorized to promulgate regulations relating to standards of sanitation, humane treatment, proper care, and the maintenance of any species of big game animals found wild in this state that is held in captivity including wildlife held under licenses or permits issued under the provisions of this chapter or other regulations issued by the commission. In addition to any other penalties, the failure of a licensee or permittee to comply with said regulations shall be grounds for the director to revoke such license or permit.

**History.**

I.C., § 36-709, as added by 1976, ch. 95, § 2, p. 315; am. and redesign. 1990, ch. 282,

§ 6, p. 788; am. 1992, ch. 81, § 18, p. 222.

**STATUTORY NOTES****Prior Laws.**

Former § 36-708, which comprised I.C., § 36-708, as added by 1976, ch. 95, § 2, p. 315, was repealed by S.L. 1990, ch. 282, § 5.

**Compiler's Notes.**

This section was formerly compiled as § 36-709.

**36-709. Reasonable inspection — Notice of violation — Required records.** — (a) Inspection of Facilities Operated Under License or Permit. As a condition to the issuance of a license or permit for the confinement of wildlife as hereinbefore provided in this chapter, the director or his duly authorized representative shall have the right at any reasonable time to enter upon and inspect any facility and wildlife held in captivity. The director shall give written notice of any violation and shall specify a reasonable time of not less than ten (10) days to remove or eliminate the violation. If upon the expiration of such time the violation has not been removed or eliminated, he may issue a citation and pursue the matter in a court of competent jurisdiction.

(b) Inspection of Other Facilities. The director or his duly authorized representatives shall have the right at any reasonable time to go upon and inspect any fur farm or domestic cervidae farm operated under the provisions of title 25, Idaho Code, as amended, or any other facilities where wildlife, including birds, is held in captivity without a permit.

(c) Records Required. Any person who imports, possesses or sells any wildlife, exotic or found wild in this state, shall keep accurate records as to the dates, names and addresses of persons or facilities from which the wildlife was obtained, as well as records of disposal, purchase or sale of any wildlife in their possession or possessed during the past five (5) years. Such records shall be produced at the request of the director or his duly authorized representative.

(d) Failure to Allow Inspection or to Produce Records. No person shall refuse reasonable inspection or to fail to maintain or to produce records for the director or his representative on request.

**History.**

I.C., § 36-710, as added by 1976, ch. 95, and redesign. 1990, ch. 282, § 7, p. 788; am. § 2, p. 315; am. 1979, ch. 85, § 3, p. 206; am. 1992, ch. 81, § 19, p. 222; am. 1994, ch. 73, § 3, p. 151.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 36-710.

Former § 36-709 was amended and redesignated as § 36-708 by § 6 of S.L. 1990, ch. 282.

**36-710. Penalty.** — Any licensee or permittee who shall be convicted of violating any of the provisions of this chapter may have his license or permit revoked by the court for a period of not to exceed twelve (12) months next following such conviction. All wildlife held under said license or permit so revoked or held without proper records shall be disposed of as determined by the court.

**History.**

I.C., § 36-711, as added by 1976, ch. 95, and redesign. 1990, ch. 282, § 8, p. 788; am. § 2, p. 315; am. 1979, ch. 85, § 4, p. 206; am. 1992, ch. 81, § 20, p. 222.

**STATUTORY NOTES****Compiler's Notes.**

This section was formerly compiled as § 36-711.

Former § 36-710 was amended and redesignated as § 36-709 by § 7 of S.L. 1990, ch. 282.

**36-711. Regulation of domestic fur-bearing animals and domestic cervidae.** — The authority to regulate the breeding, raising, producing, marketing or any other phase of the production or distribution, of domestic fur-bearing animals as defined in chapter 30, title 25, Idaho Code, and domestic cervidae as defined in chapter 37, title 25, Idaho Code, or the products thereof, is vested in the department of agriculture. Nothing in this section shall limit or affect the powers or duties of the fish and game commission and the department of fish and game relating to nondomestic fur-bearing animals and cervidae or the capture and taking thereof.

**History.**

I.C., § 36-711, as added by 1990, ch. 282,

§ 9, p. 788; am. 1994, ch. 73, § 4, p. 151; am. 2006, ch. 226, § 3, p. 677.

**STATUTORY NOTES****Compiler's Notes.**

Former § 36-711 was amended and redesignated as § 36-710 by § 8 of S.L. 1990, ch. 282.

the references to chapter 30 and 37, and deleted the former last two sentences, which were the defined lists of animals for "domestic fur-bearing animal" and "domestic cervidae."

**Amendments.**

The 2006 amendment, by ch. 226, inserted

**36-712. Tattooing of wolves — When required.** — (a) Any wolf that is captured alive to be later released or which is born or held in captivity for any purpose must be reported to the department within three (3) days of the capture or commencement of captivity. Any person found guilty of capturing or holding in captivity and failing to report the animal as required in this section, shall be punished by a fine not in excess of one thousand dollars (\$1,000) for each animal the person possesses which has not been reported as required in this section.

(b) Each animal reported as required in subsection (a) of this section shall be permanently tattooed in a manner that will provide positive individual identification of the animal. No tattoo is required under this section if the animal is subject to a permanent individual identification process by another state or federal agency.

(c) Any person holding a wolf in captivity shall immediately report to the department any death, escape, release, transfer of custody or other disposition of the animal.

(d) Any canine exhibiting primary wolf characteristics shall be classified as a wolf for the purpose of identification. All such canines shall be tattooed, registered and licensed by the department of fish and game. The fee for the license shall be as specified in section 36-416, Idaho Code.

**History.**

I.C., § 36-712, as added by 1987, ch. 323, § 1, p. 678; am. 1988, ch. 218, § 1, p. 412; am.

1992, ch. 81, § 21, p. 222; am. 2000, ch. 211, § 24, p. 538.

**STATUTORY NOTES****Effective Dates.**

Section 3 of S.L. 1988, ch. 218 read: "This act shall be in full force and effect on and after July 1, 1988; provided, however, that the provisions of Section 1 of this act requiring

tattooing shall not apply to wolves held in captivity on June 30, 1988."

Section 35 of S.L. 2000, ch. 211 declared an emergency. Approved April 5, 2000.

**36-713. Records.** — The department shall maintain a record of each animal reported to it, pursuant to section 36-712, Idaho Code. The record shall indicate:

- (1) The person by whom the animal was captured or is held in captivity;
- (2) The location of the capture or captivity;
- (3) The date the animal was tattooed;
- (4) The purpose of the captivity or capture; and
- (5) Any death, escape, release, transfer of custody, or other disposition of the animal.

**History.**

I.C., § 36-713, as added by 1987, ch. 323, § 1, p. 678; am. 2000, ch. 211, § 25, p. 538.

**STATUTORY NOTES****Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency. Approved April 5, 2000.

**36-714. Compensation for damage caused by animal held in captivity — Exceptions.** — (1) If any wolf that is held in captivity or that escapes from such captivity causes any damage to the personal property of another person, compensation for the damage shall be paid by the person holding or who held the animal in captivity.

(2) The provisions of subsection (1) do not apply to those animals captured and released as part of an ongoing game management program, an ongoing predator control program or as part of a scientific, educational or research program as certified by the department unless the animals have been involved in livestock killing.

**History.**

I.C., § 36-714, as added by 1987, ch. 323, § 1, p. 678.

**36-715. Wolves — Transition — Authorities and duties of the office of species conservation — Fish and game commission — Department of fish and game.** — (1) During the transition from federal management of wolves to state management, the governor's office of species conservation shall be the lead agency and direct implementation of wolf management policy. The department of fish and game may assist the office

of species conservation in efforts to expedite an orderly transition to state management of wolves pursuant to the provisions of the Idaho wolf conservation and management plan. This transition shall be implemented through new or existing cooperative agreements with any agency, department or entity of the United States government or any state agencies as authorized by the Idaho wolf conservation and management plan.

(2) The office of species conservation, and the commission through the department, are authorized to participate in activities regarding nuisance wolves, and are allowed to meet and confer with state, local and federal agencies, departments or entities or federally recognized Indian tribes to discuss monitoring wolf recovery programs. Additionally, the office of species conservation, and the commission through the department, may cooperate with the legislature, counties, federal agencies, departments, such as the United States department of agriculture wildlife services, entities or federally recognized Indian tribes regarding damage complaints, depredation, effects on ungulate populations, and other conflicts regarding wolves in this state.

(3) The office of species conservation, in conjunction with the department, shall prepare and submit an annual report to the senate resources and environment committee and the house resources and conservation committee on the implementation and progress of the Idaho wolf conservation and management plan. Such report shall document gray wolf effects upon wildlife, depredation on domestic livestock, and any other subject matter as deemed appropriate and requested in writing by the chairman of the senate resources and environment committee or the chairman of the house resources and conservation committee, or any member of the legislature.

(4) The office of species conservation, in conjunction with the department, is authorized to develop and coordinate wolf management plans with state agency officials of the states of Wyoming and Montana.

(5) In implementing the wolf conservation and management plan, the office of species conservation, and the commission through the department, shall consult with local units of government with respect to, and take into consideration, local economies, custom, culture, and private property rights. The office of species conservation and the department may consult with federal entities and shall coordinate with state and local government entities in the implementation of the plan.

(6) The department of fish and game, under the direction of the commission, is authorized to participate in the development of wolf delisting procedures and interim management activities including, but not limited to, studies relating to the management of game herds impacted by wolves.

**History.**

I.C., § 36-715, as added by 1988, ch. 218, § 2, p. 412; am. 1992, ch. 272, § 1, p. 222; am. 1993, ch. 332, § 1, p. 1231; am. 1994, ch. 382, § 1, p. 1228; am. 1997, ch. 235, § 1, p. 685; am. 1999, ch. 87, § 1, p. 288; am. 2000, ch. 369, § 1, p. 1222; am. 2002, ch. 327, § 1, p. 918; am. 2003, ch. 302, § 2, p. 830.

**STATUTORY NOTES****Cross References.**

Office of species conservation, § 67-818.

**Compiler's Notes.**

Section 3 of S.L. 1988, ch. 218 read: "This

act shall be full force and effect on and after July 1, 1988; provided, however, that the provisions of Section 1 of this act requiring tattooing shall not apply to wolves held in captivity on June 30, 1988."

#### **Effective Dates.**

Section 2 of S.L. 1992, ch. 272 declared an emergency. Approved April 8, 1992.

### **36-716. Establishment of a grizzly bear management oversight committee. [Null and void.]**

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

Section 2 of S.L. 1993, ch. 403 as amended by § 1 of S.L. 1995, ch. 26 and § 1 of S.L. 1997, ch. 37, effective July 1, 1997 read: "An emergency existing therefor, which emergency is hereby declared to exist, this act

shall be in full force and effect on and after its passage and approval. The provisions of this act shall be null and void and of no force and effect on and after July 1, 1999." Approved March 12, 1997.

## **CHAPTER 8**

### **COMMERCIAL FISHING**

#### **SECTION.**

- 36-801. Commercial fishing.
- 36-802. Commercial fishing authorized.
- 36-803. Purchase from other than licensed fisherman prohibited — Exceptions.

#### **SECTION.**

- 36-804. Commission authorized to make regulations.
- 36-805. Violations a misdemeanor — License revoked.

**36-801. Commercial fishing.** — The taking of fish and crustacea for commercial purposes from any of the waters of the state of Idaho shall be unlawful except as hereinafter provided.

#### **History.**

I.C., § 36-801, as added by 1976, ch. 95, § 2, p. 315; am. 1988, ch. 331, § 1, p. 992.

#### **STATUTORY NOTES**

##### **Prior Laws.**

Former title 36, chapter 8, comprised of §§ 36-801 to 36-806, was repealed by S.L. 1976, ch. 95, § 1.

##### **Compiler's Notes.**

The heading of this chapter has been changed from "Commercial Fishing in Pend

d'Oreille Lake and Clark Fork and Pend d'Oreille Rivers" to "Commercial Fishing" since in the amendment of §§ 36-801 — 36-803 by S.L. 1988, ch. 331 references to these specific bodies of water were deleted and references to the waters of the state substituted therefore.

**36-802. Commercial fishing authorized.** — The commission shall at such times and in such amounts as, through investigations it deems proper, allow commercial fishing for fish or crustacea in the waters under the jurisdiction of the state. Commercial fishing shall mean the taking or attempting to take fish or crustacea for the purpose of selling, bartering, exchanging, offering, or exposing for sale. No person shall conduct, operate or manage a commercial fishing operation without obtaining a commercial

fishing license and commercial gear tags from the director prior to engaging in such commercial fishing operation. Fishermen using five (5) or fewer traps or a single minnow net and having annual gross retail sales of five hundred dollars (\$500) or less, are exempt from purchasing a commercial license. Either the licensed commercial operator or a licensed employee must be present whenever the commercial gear is operated, lifted, or fished. The director shall charge the fee as specified in section 36-416, Idaho Code, for each resident license and the fee as specified in section 36-416, Idaho Code, for each nonresident license. Said licenses shall expire on June 30 next following date of issuance. The director shall charge the following fees for the commercial gear tags: for each crayfish or minnow trap, the fee as specified in section 36-416, Idaho Code; and for each net longer than four (4) feet, the fee as specified in section 36-416, Idaho Code.

**History.**

I.C., § 36-802, as added by 1976, ch. 95, § 2, p. 315; am. 1988, ch. 331, § 2, p. 992; am.

1989, ch. 128, § 1, p. 278; am. 1990, ch. 107,

§ 1, p. 219; am. 2000, ch. 211, § 26, p. 538.

**STATUTORY NOTES****Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency. Approved April 5, 2000.

**36-803. Purchase from other than licensed fisherman prohibited — Exceptions.** — No person shall purchase fish or crustacea taken from the waters of the state except from a fisherman licensed as provided in either section 36-802 or section 36-501(f), Idaho Code[,] or a commercial fisherman exempt from purchasing a commercial license.

**History.**

I.C., § 36-803, as added by 1976, ch. 95, § 2, p. 315; am. 1988, ch. 331, § 3, p. 992; am.

1990, ch. 107, § 2, p. 219.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion near the end of the

section was added by the compiler to conform to the statutory citation style.

**36-804. Commission authorized to make regulations.** — The commission shall be authorized to promulgate such regulations as may be necessary relating to:

1. Fishing gear and methods of use.
2. Seasons.
3. Catch and possession limits.
4. Sales and catch records.
5. Necessary forms and their use.

**History.**

I.C., § 36-804, as added by 1976, ch. 95, § 2, p. 315.

**36-805. Violations a misdemeanor — License revoked.** — Any person violating the provisions of this chapter or regulations made pursuant thereto shall be guilty of a misdemeanor and, conviction thereof shall be cause for the director to suspend or cancel any license issued under the terms of this chapter.

**History.**

I.C., § 36-805, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor when not other-

wise provided, § 18-113; penal section of fish  
and game law, § 36-1402.

**CHAPTER 9**

**PROTECTION OF FISH**

**SECTION.**

- 36-901. Fishing unlawful except by commission rule or proclamation.
- 36-902. Unlawful fishing methods — Destruction of fish prohibited — Exceptions.
- 36-903. Control or removal of undesirable fish.
- 36-904. Whitefish — Taking with seine. [Repealed.]
- 36-905. Fish racks or traps unlawful except by permit.

**SECTION.**

- 36-906. Fishways in dams — Screens in diversions — Removal of unused dams — Penalty.
- 36-907. Open passage — Replacement by department — Maintenance by owner.
- 36-908. The department is authorized to establish or maintain screening devices in artificial watercourses.
- 36-909. Penalty.

**36-901. Fishing unlawful except by commission rule or proclamation.** — No person shall take by any method or means, at any place or time or in any amount, or to have in possession fish from any of the waters of the state of Idaho except as permitted by provisions of this title and commission rules or proclamations promulgated pursuant thereto.

**History.**

I.C., § 36-901, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 22, p. 222; am.

1998, ch. 170, § 5, p. 567.

**STATUTORY NOTES**

**Prior Laws.**

Former title 36, chapter 9, comprised of

§§ 36-901 to 36-910, was repealed by S.L. 1976, ch. 95, § 1.

**36-902. Unlawful fishing methods — Destruction of fish prohibited — Exceptions.** — Except as may be otherwise permitted by law or commission rule or proclamation no person shall:

- (a) Destructive Substances. Deposit, throw, place, allow or cause to pass into any of the waters of this state any deleterious drugs, toxicants, chemicals, poisonous substances, explosives, electrical current, or other material which may tend to destroy, kill, disable, or drive away fish.
- (b) Mills. Operate any sawmill, reduction works or quartz mill upon any

natural stream course or lake without having first constructed a proper dam for settling purposes as approved by the director.

(c) Net, Spear. Catch, attempt to catch or kill any species of fish whatever in any of the streams, rivers, lakes, reservoirs or waters of this state with any seine, net, spear, snag hook, weir, fence, basket, trap, gill net, dip net, trammel net or any other contrivance.

(d) Minnows. Take, transport, use or have in possession minnows, fish or the young of any fish or parts thereof for bait or to release in any manner live minnows, fish or the young of any fish into the waters of this state.

(e) Chumming. Deposit or distribute any substance not attached to a hook for the purpose of attracting fish. Salmon eggs or other spawn may be used for bait only when attached to a hook on a line and fished in the conventional manner.

(f) Penalty. Any person convicted of any violation of any of the provisions of this section shall: for subsections (a) and (b), be fined in a sum of not less than one hundred fifty dollars (\$150) for each offense, and/or by commitment to jail for a period of not more than six (6) months; for subsection (c), not less than fifty dollars (\$50.00), and/or by commitment to jail for a period of not more than six (6) months; for subsections (d) and (e), as provided in section 36-1402, Idaho Code.

**History.**

I.C., § 36-902, as added by 1976, ch. 95, § 2, p. 315; am. 1989, ch. 375, § 1, p. 944; am.

1991, ch. 49, § 2, p. 87; am. 1992, ch. 81, § 23, p. 222; am. 1998, ch. 170, § 6, p. 567; am. 2002, ch. 48, § 1, p. 109.

**STATUTORY NOTES**

**Cross References.**

Hunting with aid of artificial light, § 36-1101.

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

Removal of undesirable fish, § 36-903.

Undesirable species, commission may exercise control measures over, § 36-104.

**36-903. Control or removal of undesirable fish.** — (a) Commission May Authorize Removal or Destruction. In any waters of this state where it is deemed the population of any species of fish is of such density as to be detrimental to the overall fishery resource, the commission may authorize the reduction or removal of such fish. The fish so taken shall be disposed of, with or without royalty, and in such manner as the commission may determine.

(b) Commission to Authorize Rehabilitation. The commission may authorize the director to rehabilitate any fishery in such waters of the state as found, through proper investigation, to be desirable.

**History.**

I.C., § 36-903, as added by 1976, ch. 95, § 2, p. 315.

**STATUTORY NOTES****Cross References.**

Commission may exercise control measures of undesirable species, § 36-104.

**36-904. Whitefish — Taking with seine. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

Former § 36-904, which comprised I.C., § 36-904, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 24, p. 222, was repealed by S.L. 2000, ch. 211, § 27, effective May 1, 2000.

**36-905. Fish racks or traps unlawful except by permit.** — No person shall place racks or traps or any other obstruction across any of the streams or waters of the state of Idaho in order to take fish for any purpose without first obtaining a permit from the director. No unauthorized person shall tamper with, damage or destroy any such permitted rack, trap or other obstruction.

**History.**

I.C., § 36-905, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 25, p. 222.

**36-906. Fishways in dams — Screens in diversions — Removal of unused dams — Penalty.** — (a) Fishways Required. No person shall construct or maintain a dam or other obstruction which restricts the free and uninterrupted passage of fish in any stream in this state without a proper fishway therein. Such fishway shall be installed and maintained at the owner's expense and shall be of a sufficient kind and capacity as to accommodate seasonal movements of fish up and down the stream. Said fishway shall be constructed according to plans and specifications approved by the director and such plans shall be incorporated into the overall design of said dam prior to the start of construction. The director, upon request, shall furnish design criteria for such fishway construction.

(b) Screening of Diverted Waters. No person shall operate any mill, factory, power plant or other manufacturing concern run by water power and having either a head or tail race, or for any person to maintain and operate any ditch, flume, canal or other water conduit receiving or taking water from any stream or lake in this state without first installing and maintaining a suitable screen or other device to prevent fish from entering therein; said screens shall be installed and maintained in a manner and to such specifications and at such locations as may be required by the director and at the expense of the owner or operator of such diversion.

(c) Notification of Need — Screens or Fishways. When a need is found for screens or fishways in planned or existing diversions, dams or obstructions, the director shall order in writing the construction and installation of such screens or fishways. Said order shall specify the type, design and location of said screen or fishway and the time within which said screen or fishway must be installed. Said time shall not be less than thirty (30) days nor more than six (6) months from the date of service of said order.

(d) Removal of Existing Structures — Removal of Abandoned Structures. When it is found that dams or other obstructions which have been placed in the rivers or streams of this state have been abandoned or are not serving any useful purpose and it appears the same are detrimental to the fishery resource, the director may cause the removal of same in such manner as he may see fit.

**History.**

I.C., § 36-906, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 92, § 3, p. 171; am.

1992, ch. 81, § 26, p. 222.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

**Compiler's Notes.**

The bracketed insertion in the second sen-

tence was added by the compiler to correct the name of the referenced account. See § 36-107.

**36-907. Open passage — Replacement by department — Maintenance by owner.** — When it is determined that any existing or proposed dam or obstruction requires a fishway and none has been installed therein, the director shall keep the same open until said fishway is put therein by the owner. Where a fishway has heretofore been constructed and approved by the director and has proved useless or inadequate for such purpose, the director shall have authority to construct a new fishway and to pay the expense of such construction out of the fish and game fund [account]. However, when such fishway is then properly functioning, it shall be maintained and replaced as required at the expense of the person owning the dam or other obstruction.

**History.**

I.C., § 36-907, as added by 1976, ch. 95, § 2, p. 315.

**STATUTORY NOTES****Cross References.**

Fish and game account, § 36-107.

**Compiler's Notes.**

The Idaho fish and game code, referred to in

the second sentence, is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code.

**36-908. The department is authorized to establish or maintain screening devices in artificial watercourses.** — The department may install and maintain screening and bypass devices in any gravity-fed diversion taking or receiving one hundred twenty-five (125) cubic feet of water per second or less from any stream or lake in this state in which fish may exist or are placed or planted, to prevent said fish from leaving such waters. For such purposes, the department may install, maintain, repair, relocate or reinstall all such screens, gratings, or other devices and all bypasses thereto. No screen or other device shall be installed which will diminish the flow of water in such diversion. It shall be unlawful for any person to interfere with, tamper with, damage, destroy or remove any fish screening or bypass device installed pursuant to this chapter.

**History.**

I.C., § 36-908, as added by 1976, ch. 95,  
§ 2, p. 315.

**36-909. Penalty.** — Any person violating any of the provisions of this chapter relating to fish racks or traps, fishways, fish ladders or screens shall be guilty of a misdemeanor. Provided, that the continuance from day to day of the neglect or refusal to correct the violation shall constitute a separate offense for each day.

**History.**

I.C., § 36-909, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor where none prescribed, § 18-317.

Unclaimed game, hides and pelts, confiscation and sale, proceeds to fish and game account, § 36-1304.

**CHAPTER 10****STATE BOUNDARY WATERS — RECIPROCAL AGREEMENTS****SECTION.**

36-1001. Idaho, Oregon, Washington boundary waters — Snake River — Reciprocity.

36-1002. Enforcement.

36-1003. Bear Lake, Snake River — Reciprocal recognition of licensing rights — Idaho, Washington, Oregon and Utah.

**SECTION.**

36-1004. Violations a misdemeanor.

36-1005. Bear Lake watershed — Cooperative agreements with Utah and Wyoming authorized.

36-1006. State boundary lands — Reciprocity — Purpose — Cooperative agreements authorized — Enforcement.

**36-1001. Idaho, Oregon, Washington boundary waters — Snake River — Reciprocity.** — (a) Oregon, Idaho Boundary Waters. The right to fish, hunt, or trap in the waters or on the islands of the Snake River where said river forms the boundary line between the state of Oregon and the state of Idaho by the holder of either a valid Oregon or Idaho license therefor in accordance with the laws and rules of the respective state is hereby recognized and made lawful.

(b) Washington, Idaho Boundary Waters. The right to fish or hunt in the waters or on the islands of the Snake River where said river forms the boundary line between the state of Idaho and the state of Washington by the holder of a valid Idaho or Washington license therefor in accordance with the fish and game laws of the respective state is hereby recognized and made lawful.

(c) Purpose and Limitation. The purpose of this section is to avoid the conflict, confusion and difficulty of an attempt to find the exact locations of the state boundary in or on said waters and on said islands of the Snake River. Provided, however, nothing in this section shall be construed to authorize:

1. The holder of an Oregon or Washington license to fish, hunt or trap on

the shoreline, sloughs or tributaries on the Idaho side of the Snake River, except by agreement as provided for in section 36-1003(b), Idaho Code.

2. The holder of an Idaho license to angle, hunt or trap on the shoreline, sloughs or tributaries on the Oregon or Washington side of the Snake River, except by agreement as provided for in section 36-1003(b), Idaho Code.

3. The holder of licenses for both Idaho and Oregon or for both Idaho and Washington to exercise the privileges of both such licenses at the same time.

**History.**

I.C., § 36-1001, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1983, ch. 70, § 1, p. 154.

**STATUTORY NOTES**

**Prior Laws.**

Former title 36, chapter 10, comprised of

§§ 36-1001 to 36-1010, was repealed by S.L.  
1976, ch. 95, § 1.

**36-1002. Enforcement.** — For the purposes of enforcing the provisions of section 36-1001, Idaho Code, the courts of this state sitting in the various counties contiguous to said waters, and the officers of this state empowered to enforce laws pertaining to fish or game are hereby given and shall have jurisdiction over the entire boundary waters aforesaid to the furthermost shoreline. Concurrent jurisdiction with the courts and administrative officers of the states of Washington and Oregon over the said boundary waters is hereby expressly recognized and established.

**History.**

I.C., § 36-1002, as added by 1976, ch. 95,  
§ 2, p. 315.

**36-1003. Bear Lake, Snake River — Reciprocal recognition of licensing rights — Idaho, Washington, Oregon and Utah.** — (a) Bear Lake. The commission is authorized to enter into reciprocal agreements with the Utah fish and game commission for the purpose of recognizing license rights of both Idaho and Utah fishing license holders to fish in the waters of Bear Lake, whether or not the said waters are within the state of Idaho or the state of Utah.

(b) Snake River. 1. Oregon Fish and Game Commission. The commission is authorized to enter into reciprocal agreements with the Oregon fish and game commission for the purpose of recognizing license rights of Idaho and Oregon fishing license holders to fish in the waters of the Snake River where those waters form the boundary line between Idaho and Oregon.

2. Washington Game Commission. The commission is authorized to enter into reciprocal agreements with the Washington game commission for the purpose of recognizing license rights of Idaho and Washington fishing license holders to fish in the waters of the Snake River where those waters form the boundary line between Idaho and Washington.

**History.**

I.C., § 36-1003, as added by 1976, ch. 95, § 2, p. 315; am. 1983, ch. 70, § 2, p. 154.

**STATUTORY NOTES****Compiler's Notes.**

The powers and duties formerly exercised by the Utah fish and game commission, referred to in subsection (a), are now found in the division of wildlife resources within the Utah department of natural resources. See Utah Code Ann. § 23-14-1.

The powers and duties formerly exercised by the Oregon fish and game commission,

referred to in subsection (b)1, are now found in the Oregon fish and wildlife commission. See OR Rev. Stats. § 496.090.

The powers and duties formerly exercised by the Washington game commission, referred to in subsection (b)2, are now found in the Washington fish and wildlife commission. See Rev. Code Wash. § 77.04.010 et seq.

**36-1004. Violations a misdemeanor.** — Any person violating the provisions of this chapter or regulations made pursuant thereto shall be guilty of a misdemeanor.

**History.**

I.C., § 36-1004, as added by 1976, ch. 95, § 2, p. 315.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor where none prescribed, § 18-317.

**36-1005. Bear Lake watershed — Cooperative agreements with Utah and Wyoming authorized.** — The Idaho fish and game commission is authorized to enter into cooperative agreements with the Utah and Wyoming fish and game commissions for the purpose of development, construction, and maintenance of the fishing resources of the Bear Lake watershed.

**History.**

I.C., § 36-1005, as added by 1976, ch. 95, § 2, p. 315.

**STATUTORY NOTES****Compiler's Notes.**

The powers and duties formerly exercised by the Utah fish and game commission, referred to in subsection (a), are now found in the division of wildlife resources within the

Utah department of natural resources. See Utah Code Ann. § 23-14-1.

The Wyoming game and fish commission is continued in existence in Wyo. Stat. § 23-1-201.

**36-1006. State boundary lands — Reciprocity — Purpose — Cooperative agreements authorized — Enforcement.** — (a) The right to hunt big game in herd units where the herd unit incorporates the boundary line between a contiguous state and the state of Idaho by the holder of either a valid contiguous state or Idaho license therefor in accordance with the laws and rules of the respective state is hereby recognized and made lawful.

(b) The purpose of this section is to avoid the conflict, confusion and

difficulty of an attempt to find the exact locations of the state boundary while hunting big game, and to allow management of big game resources which cross state boundaries. Provided, however, nothing in this section shall be construed to authorize:

1. The holder of a contiguous state big game hunting license to hunt in Idaho outside of a defined boundary herd unit subject to reciprocal hunting.
  2. The holder of an Idaho big game hunting license to hunt in a contiguous state outside of a defined boundary herd unit subject to reciprocal hunting.
  3. The holder of licenses for both Idaho and a contiguous state to exercise the privileges of both such licenses at the same time.
- (c) The director is authorized to enter into reciprocal agreements with the directors of fish and game departments of contiguous states for the purpose of recognizing license rights of both Idaho and contiguous state big game hunting license holders to hunt in herd units which incorporate the boundary line between the state of Idaho and a contiguous state, whether or not said lands are within the state of Idaho or the contiguous state.

(d) For the purposes of enforcing the provisions of this section, the courts of this state sitting in the various counties which incorporate boundary herd units, and the officers of this state empowered to enforce laws pertaining to fish and game are hereby given and shall have jurisdiction over the entire boundary herd unit. Concurrent jurisdiction with the court and administrative officers of contiguous states over said boundary herd units is hereby expressly recognized and established.

#### **History.**

I.C., § 36-1006, as added by 1992, ch. 242,  
§ 1, p. 720.

## **CHAPTER 11**

### **PROTECTION OF ANIMALS AND BIRDS**

#### **SECTION.**

- 36-1101. Taking of wildlife unlawful except by statute or commission rule or proclamation — Methods prohibited — Exceptions.  
 36-1102. Protection of birds.  
 36-1103. Fur-bearing animals — Seasons — Methods — Amounts.  
 36-1104. Special beaver tags — Fee — Use. [Repealed.]  
 36-1104A. Special bobcat or otter export tags — Fee.  
 36-1105. Report of trappers — Penalty for failure to report.  
 36-1106. [Amended and redesignated.]

#### **SECTION.**

- 36-1107. Wild animals and birds damaging property.  
 36-1108. Control of damage by antelope, elk, deer or moose — Compensation for damages.  
 36-1109. Control of damage by black bears, grizzly bears or mountain lions — Compensation for damage.  
 36-1110. Control of damage by grazing wildlife — Compensation for damage.  
 36-1111 — 36-1119. [Reserved.]  
 36-1120. Penalties.

**36-1101. Taking of wildlife unlawful except by statute or commission rule or proclamation — Methods prohibited — Exceptions.** — (a) It is unlawful, except as may be otherwise provided by Idaho law, including this title or commission rules or proclamations promulgated

pursuant thereto, for any person to take any of the game animals, birds or fur-bearing animals of this state.

(b) Except as may be otherwise provided under this title or commission rules or proclamations promulgated pursuant thereto, it is unlawful for any person to:

1. Hunt from Motorized Vehicles. Hunt any of the game animals or game birds of this state from or by the use of any motorized vehicle except as provided by commission rule; provided however, that the commission shall promulgate rules which shall allow a physically disabled person to apply for a special permit which would allow the person to hunt from a motorized vehicle which is not in motion. A physically disabled person means a person who has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to one (1) or more of the following impairments: neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb.

The commission shall specify the form of application for and design of the special permit which shall allow a physically disabled person to hunt from a motorized vehicle which is not in motion. No fee shall be charged for the issuance of the special permit and the issuance of a special permit shall not exempt a person from otherwise properly purchasing or obtaining other necessary licenses, permits and tags in accordance with this title and rules promulgated pursuant thereto. The special permit shall not be transferable and may only be used by the person to whom it is issued. A person who has been issued a special permit which allows a physically disabled person to hunt from a motorized vehicle not in motion shall have that permit prominently displayed on any vehicle the person is utilizing to hunt from and the person shall produce, on demand, the permit and other identification when so requested by a conservation officer of the department of fish and game. A person possessing a special permit shall not discharge any firearm from or across a public highway. In addition to other penalties any unauthorized use of the special permit shall be grounds for revocation of the permit.

2. Molest with Motorized Vehicles. Use any motorized vehicle to molest, stir up, rally or drive in any manner any of the game animals or game birds of this state.

3. Communicate from Aircraft. Make use of aircraft in any manner to spot or locate game animals, game birds or fur-bearing animals of this state from the air and communicate the location or approximate location thereof by any signals whatsoever, whether radio, visual or otherwise, to any person then on the ground.

4. Hunt from Helicopter. Make use of any helicopter in any manner in the taking of game or loading, transporting, or unloading hunters, game or hunting gear in any manner except when such use is at recognized airports or airplane landing fields, or at heliports which have been previously established on private land or which have been established by

a department or agency of the federal, state or local government or when said use is in the course of emergency or search and rescue operations. Provided however, that nothing in this chapter shall limit or prohibit the lawful control of wolves or predatory or unprotected animals through the use of helicopters when such measures are deemed necessary by federal or state agencies in accordance with existing laws or management plans.

5. Hunt with Aid of Aircraft. Make use of any aircraft to locate any big game animal for the purpose of hunting those animals during the same calendar day those animals were located from the air. Provided however, that nothing in this chapter shall limit or prohibit the lawful control of wolves or predatory or unprotected wildlife through the use of aircraft when such measures are deemed necessary by federal or state agencies in accordance with existing laws or management plans.

6. Artificial Light. Hunt any animal or bird except raccoon by the aid of a spotlight, flashlight or artificial light of any kind. The act of casting or throwing, after sunset, the beam or rays of any spotlight, headlight or other artificial light capable of utilizing six (6) volts or more of electrical power upon any field, forest or other place by any person while having in his possession or under his control any uncased firearm or contrivance capable of killing any animal or bird, shall be *prima facie* evidence of hunting with an artificial light. Provided nothing in this subsection shall apply where the headlights of a motor vehicle, operated and proceeding in a normal manner on any highway or roadway, cast a light upon animals or birds on or adjacent to such highway or roadway and there is no intent or attempt to locate such animals or birds. Provided further, nothing in this subsection shall prevent the hunting of unprotected or predatory wildlife with the aid of artificial light when such hunting is for the purpose of protecting property or livestock, is done by landowners or persons authorized in writing by them to do so and is done on property they own, lease or control; and provided further that the hunting and taking of unprotected or predatory wildlife with the aid of artificial light on public lands is authorized after obtaining a permit to do so from the director. The director may, for good cause, refuse to issue such permit.

Other provisions of this subsection notwithstanding, the commission may establish rules allowing the hunting of raccoon with the aid of an artificial light.

7. Regulation of Dogs.

(A) No person shall make use of a dog for the purpose of pursuing, taking or killing any of the big game animals of this state except as otherwise provided by rules of the commission.

(B) Any person who is the owner of, or in possession of, or who harbors any dog found running at large and which is actively tracking, pursuing, harassing or attacking, or which injures or kills deer or any other big game animal within this state shall be guilty as provided in section 36-1401(a)1.(F), Idaho Code. It shall be no defense that such dog or dogs were pursuing said big game animals without the aid or direction of the owner, possessor, or harborer.

(C) Any dog found running at large and which is actively tracking, pursuing, harassing, attacking or killing deer or any other big game

animal may be destroyed without criminal or civil liability by the director, or any peace officer, or other persons authorized to enforce the Idaho fish and game laws.

**8. Attempt to take Simulated Wildlife.**

(A) Attempt to take, by firearm or any other contrivance capable of killing an animal or bird, simulated wildlife in violation of any of the provisions of this title or commission rules applicable to the taking of the wildlife being simulated, when the simulated wildlife is being used by a conservation officer or other person authorized to enforce Idaho fish and game laws or rules promulgated pursuant thereto. No person shall be found guilty of violating either this subparagraph, or subparagraph (B) of this paragraph, provided that no other law or rule has been violated.

(B) Any person pleading guilty to, convicted of or found guilty for attempting to take simulated wildlife within this state shall be guilty of a misdemeanor and shall be punished as provided in either subsection (b) or (d) of section 36-1402, Idaho Code, and shall pay restitution in an amount of no less than fifty dollars (\$50.00) for the repair or replacement of the simulated wildlife.

**9. Devices Accessed via Internet.**

(A) No person shall shoot at or kill any bird or animal in Idaho, wild or domestic, including domestic cervidae governed under the provisions of chapter 37, title 25, Idaho Code, with any gun or other device accessed and controlled via an internet connection. Accessing, regulating access to, or regulating the control of a device capable of being operated in violation of this paragraph shall be *prima facie* evidence of an offense under this paragraph.

(B) Any person pleading guilty to, convicted of or found guilty of a violation of this paragraph shall be guilty of a misdemeanor and shall be punished as provided in section 36-1402, Idaho Code.

**History.**

I.C., § 36-1101, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 363, § 1, p. 950; am. 1979, ch. 196, § 1, p. 566; am. 1986, ch. 75, § 1, p. 231; am. 1986, ch. 297, § 1, p. 745; am. 1989, ch. 95, § 1, p. 221; am. 1992, ch. 81, § 27, p. 222; am. 1992, ch. 218, § 1, p. 655; am. 1994, ch. 94, § 1, p. 213; am. 1994, ch. 115, § 1, p. 262; am. 1998, ch. 170, § 7, p. 567; am. 2005, ch. 180, § 1, p. 553; am. 2007, ch. 36, § 1, p. 85; am. 2007, ch. 67, § 1, p. 171; am. 2007, ch. 261, § 1, p. 773; am. 2011, ch. 281, § 1, p. 762.

**STATUTORY NOTES**

**Cross References.**

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

Wildlife restoration projects, funds for, § 36-1801 et seq.

**Prior Laws.**

Former title 36, chapter 11, comprised of §§ 36-1101 to 36-1108, was repealed by S.L. 1976, ch. 95, § 1.

**Amendments.**

This section was amended by two 1994 acts

which appear to be compatible and have been compiled together.

The 1994 amendment, by ch. 94, § 1, deleted the version of subsection (a) as enacted by 1992 acts, ch. 81, § 27 which read "It is unlawful, except as may be otherwise provided under this title or commission regulations promulgated pursuant thereto, for any person to take any of the game animals, birds or fur-bearing animals of this state. It is unlawful for any person to:"; substituted "rules" or "rule" for "regulations" or "regulation" throughout the section; in the second

sentence of paragraph (b)1., deleted "and regulations" following "promulgate rules"; in subsection (b) 1. (B) substituted "(po<sub>2</sub>)" for "(po)", and in the first sentence of paragraph (b)6.(B), substituted "section 36-1401(a)1.(F)" for "section 36-1401".

The 1994 amendment, by ch. 115, § 1, also deleted the version of subsection (a) as enacted by 1992 acts, ch. 81, § 27 which read "It is unlawful, except as may be otherwise provided under this title or commission regulations promulgated pursuant thereto, for any person to take any of the game animals, birds or fur-bearing animals of this state. It is unlawful for any person to:"; and added paragraph (b)7.

This section was amended by three 2007 acts which appear to be compatible and have been compiled together.

The 2007 amendment, by ch. 36, in subsection (b)1., in the first paragraph, substituted the language beginning "who has lost the use of one (1) or both lower extremities" for subsections (a)1.(A) through (C), which defined a

physically handicapped person as one who has lost the use of one or both lower extremities or both hands, a person suffering from lung disease, or a person impaired by cardiovascular disease, respectively, and substituted "disabled person" for "handicapped person" throughout.

The 2007 amendment, by ch. 67, in subsection (b)7.(A), substituted "either this subparagraph, or subparagraph (B) of this paragraph" for "this subpart"; and in subsection (b)7.(B), added "and shall pay restitution in an amount of no less than fifty dollars (\$50.00) for the repair or replacement of the simulated wildlife."

The 2007 amendment, by ch. 261, added subsection (b)8.

The 2011 amendment, by ch. 281, inserted "or predatory or unprotected animals" following "wolves" in the last sentence in paragraph (b)4. and inserted paragraph (b)5., renumbering the subsequent paragraphs accordingly.

## JUDICIAL DECISIONS

### **Constitutionality.**

The prohibition of this section against killing deer out of hunting season is a reasonable limitation on a property owner's right to pro-

tect her property and does not violate Idaho Const., Art. 1, § 1. State v. Thompson, 136 Idaho 322, 33 P.3d 213 (Ct. App. 2001).

### DECISIONS UNDER PRIOR LAW

#### ANALYSIS

Hunting by Native Americans.  
Spotlights.

### **Hunting by Native Americans.**

Although Indians retained the aboriginal right to hunt on open and unclaimed land, they are subject to state game laws while hunting on private land. State v. Coffee, 97 Idaho 905, 556 P.2d 1185 (1976).

### **Spotlights.**

Amended criminal complaint, which set forth specific facts showing that defendants

were only planning to hunt deer with a spotlight, did not allege any crime, and trial court properly sustained a demurrer filed to the complaint. State v. Schirmer, 70 Idaho 83, 211 P.2d 762 (1949).

Statute making it a misdemeanor to take, kill or attempt to kill any game with the aid of a spotlight does not apply to hunting deer. State v. Schirmer, 70 Idaho 83, 211 P.2d 762 (1949).

**36-1102. Protection of birds.** — (a) Game, Song, Insectivorous, Rodent Killing, and Innocent Birds Protected. Except for English sparrows and starlings, no person shall at any time of the year take any game, song, rodent killing, insectivorous or other innocent bird, except as provided by commission proclamations promulgated pursuant hereto, or for any person to intentionally disturb or destroy the eggs or nests of such birds at any time.

#### (b) Migratory Birds.

- No person shall hunt, take or have in possession any migratory birds except as provided by federal regulations made pursuant to the federal migratory bird treaty act, as amended, and in accordance with related rules and proclamations promulgated by the commission.

2. No person subject to the federal migratory bird hunting stamp act tax shall hunt any migratory waterfowl unless at the time of such hunting he carries on his person an unexpired federal migratory bird hunting stamp validated by his signature in ink across the face of the stamp or an electronically issued unexpired validation on a valid license while hunting such birds.

(c) Falconry. The commission is authorized to establish a falconry program and to promulgate rules and proclamations governing same. As may be required by commission rule, the fees for a falconry permit, raptor captive breeding permit and raptor in-state transfer permit shall be as specified in section 36-416, Idaho Code. The falconry and the raptor captive breeding permit shall expire three (3) years from date of issue.

**History.**

I.C., § 36-1102, as added by 1976, ch. 95, § 2, p. 315; am. 1990, ch. 2, § 1, p. 3; am.

1992, ch. 81, § 28, p. 222; am. 1998, ch. 170, § 8, p. 567; am. 2000, ch. 211, § 28, p. 538.

**STATUTORY NOTES**

**Cross References.**

Federal migratory bird reservations, § 36-1806.

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402

The federal migratory bird hunting stamp act, referred to in subsection (b)(2), is compiled as 16 USCS § 718 et seq.

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**Federal References.**

The federal migratory bird treaty act, referred to in subsection (b), is compiled as 16 USCS §§ 703 et seq.

**36-1103. Fur-bearing animals — Seasons — Methods — Amounts.**

— No person shall trap or take by any method or means and at any place or time or in any amount or to have in possession any wild fur-bearing animals or pelts thereof except as permitted by provisions of this title and commission rules and proclamations promulgated pursuant thereto.

(a) Trapping — Fur-bearing Animals. No person shall:

1. Use any part of a game bird, game animal, or game fish for bait in trapping or taking of any wildlife.
2. Destroy, disturb, or remove the trap or traps of any licensed trapper within this state provided, however, that the director may inspect such traps and seize same when unlawfully set.

(b) Seizure and Sale of Unclaimed Traps. Traps or other trapping equipment unlawfully set shall be seized by the director or any officer charged with the enforcement of the wildlife laws and may be sold and the moneys of such sale shall be credited to the state fish and game fund [account].

(c) Muskrat House Protected. No person shall trap in or on or to destroy or damage any muskrat house at any time. For the purpose of this section what is known as a push-up is not construed to be a muskrat house in the sense of the law pertaining to trapping in or on muskrat houses.

**History.**

I.C., § 36-1103, as added by 1976, ch. 95,

§ 2, p. 315; am. 1992, ch. 81, § 29, p. 222; am. 1998, ch. 170, § 9, p. 567.

**STATUTORY NOTES****Cross References.**

Director of fish and game department, § 36-106.

Fish and game fund, § 36-107.

Other devices for taking animals, seizure and sale, § 36-1304.

Penal section of Fish and Game Law, § 36-1402.

Trapping defined, § 36-202.

**Compiler's Notes.**

The bracketed insertion at the end of subsection (b) was added by the compiler to correct the name of the referenced account. See § 36-107.

**36-1104. Special beaver tags — Fee — Use. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-1104, as added by 1976, ch. 95, § 2, p. 315;

am. 2000, ch. 211, § 29, p. 538, was repealed by S.L. 2009, ch. 201, § 3, effective April 15, 2009.

**36-1104A. Special bobcat or otter export tags — Fee.** — The commission may provide for, and regulate the issuance of, a special tag to be attached to the hide of any bobcat or any otter legally taken in the state of Idaho. A tag shall be authority to export bobcat or otter hides taken in Idaho as provided by regulation of the U.S. fish and wildlife service.

The commission may set the price to be charged for such tags, at a cost not to exceed the fee as specified in section 36-416, Idaho Code, per tag.

No export tag shall be issued for any bobcat or otter hide not taken in Idaho.

**History.**

I.C., § 36-1104A, as added by 1981, ch. 69,

§ 1, p. 101; am. 2000, ch. 211, § 30, p. 538; am. 2009, ch. 201, § 4, p. 643.

**STATUTORY NOTES****Amendments.**

The 2009 amendment, by ch. 201, substituted "otter" for "lynx" in the heading and throughout the section.

intent of the Legislature that a Department of Fish and Game continue to monitor and study populations of elk, deer and moose, including predation by wolves, to provide this beneficial information."

**Legislative Intent.**

Section 5 of S.L. 2009, ch. 201 provided: "Legislative Intent. The legislature recognizes a benefit to the public from elk and mule deer population monitoring to assess abundance, sex ratios and juvenile production and from studies to monitor survival and mortality factors of elk, deer and moose. It is the

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency. Approved April 5, 2000.

Section 6 of S.L. 2009, ch. 201 declared an emergency effective April 15, 2009. Approved April 22, 2009.

**36-1105. Report of trappers — Penalty for failure to report.** — By the 31st of July of each year, the director shall be furnished with an accurate, written report from all persons who held a trapping license during the preceding license year as to the number and kinds of wild animals caught, killed and pelts during the open season, where the hides and pelts were sold and the amount derived from the sale thereof. Any trapper failing to make such a report by said date shall be refused a license to trap animals for the ensuing year.

**History.**

I.C., § 36-1105, as added by 1976, ch. 95,  
§ 2, p. 315.

**36-1106. [Amended and redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 36-1106, which comprised I.C., 102A by S.L. 1989, ch. 211, § 1.  
§ 36-1106, as added by 1976, ch. 95, § 2, p. 315, was amended and redesignated as § 22-

**36-1107. Wild animals and birds damaging property.** — Other provisions of this title notwithstanding, any person may control, trap, and/or remove any wild animals or birds or may destroy the houses, dams, or other structures of furbearing animals for the purpose of protecting property from the depredations thereof as hereinafter provided.

The director may delegate any of the authority conferred by this section to any other employee of the department.

(a) Director to Authorize Removal of Wildlife Causing Damage. Except for antelope, elk, deer or moose when any other wildlife, protected by this title, is doing damage to or is destroying any property, including water rights, or is likely to do so, the owner or lessee thereof may make complaint and report the facts to the director or his designee who shall investigate the conditions complained of. In the case of water rights, the director shall request an investigation by the director of the department of water resources of the conditions complained of. The director of the department of water resources shall request a recommendation from the local water master, if any, and upon such examination, shall certify to the director of the department of fish and game whether said wildlife, or houses, dams or other structures erected by said wildlife is injuring or otherwise adversely impacting water rights. If it appears that the complaint is well-founded and the property of such complainant is being or is likely to be damaged or destroyed by any such wildlife protected under this title, the director may:

1. Send a representative onto the premises to control, trap, and/or remove such protected wildlife as will stop the damage to said property. Any animals or birds so taken shall remain the property of the state and shall be turned over to the director.
2. Grant properly safeguarded permission to the complainant to control, trap and/or remove such protected wildlife or to destroy any houses, dams, or other structures erected by said animals or birds. Any protected wildlife so taken shall remain the property of the state and shall be turned over to the director.
3. Whenever deemed to be in the public interest, authorize or cause the removal, modification or destruction of any dam, house, structure or obstruction erected by any furbearing animals. The director shall have authority to enter upon all lands, both public and private, as necessary, to control, trap or remove such animals, or to so remove, modify or destroy such dam, house, structure or obstruction that is injuring or otherwise adversely impacting water rights, or to require the landowner to do so. The director shall make a reasonable effort to contact any private

landowner to schedule a date and approximate time for the removal, modification or destruction. No liability whatever shall accrue to the department or the director by reason of any direct or indirect damage arising from such entry upon land, destruction, removal or modification.

4. Issue a permit to any bona fide owner or lessee of property which is being actually and materially damaged by furbearing animals, to trap or kill or to have trapped or killed such animals on his own or leased premises. Such permit may be issued without cost to a landholder applicant and shall designate therein the number of furbearing animals that may be trapped or killed, the name of the person who the landowner has designated to take such furbearers and the valid trapping license number of the taker. Furbearers so taken shall be the property of the taker. Beaver so taken shall be handled in the manner provided in section 36-1104, Idaho Code. The term "premises" shall be construed to include any irrigation ditch or right-of-way appurtenant to the land for which said permit is issued.

(b) Control of Depredation of Black Bear, Mountain Lion, and Predators. Black bear, mountain lion, and predators may be disposed of by livestock owners, their employees, agents and animal damage control personnel when same are molesting or attacking livestock and it shall not be necessary to obtain any permit from the department. Mountain lion so taken shall be reported to the director within ten (10) days of being taken. Livestock owners may take steps they deem necessary to protect their livestock.

(c) Control of Depredation of Wolves. Wolves may be disposed of by livestock or domestic animal owners, their employees, agents and animal damage control personnel when the same are molesting or attacking livestock or domestic animals and it shall not be necessary to obtain any permit from the department. Wolves so taken shall be reported to the director within seventy-two (72) hours, with additional reasonable time allowed if access to the site where taken is limited. Wolves so taken shall remain the property of the state. Livestock and domestic animal owners may take all nonlethal steps they deem necessary to protect their property. A permit must be obtained from the director to control wolves not molesting or attacking livestock or domestic animals. Control is also permitted by owners, their employees and agents pursuant to the Idaho department of fish and game harvest rules. For the purposes of this subsection (c), "molesting" shall mean the actions of a wolf that are annoying, disturbing or persecuting, especially with hostile intent or injurious effect, or chasing, driving, flushing, worrying, following after or on the trail of, or stalking or lying in wait for, livestock or domestic animals.

(d) Taking of Muskrats in Irrigation Systems Authorized. Muskrats may be taken at any time in or along the banks of irrigation ditches, canals, reservoirs or dams, by the owners, their employees, or those in charge of said irrigation ditches or canals.

**History.**

I.C., § 36-1107, as added by 1976, ch. 95, § 2, p. 315; am. 1984, ch. 144, § 1, p. 338; am. 1988, ch. 32, § 1, p. 40; am. 1988, ch. 321, § 1,

p. 979; am. 1990, ch. 370, § 4, p. 1007; am. 1996, ch. 64, § 1, p.; am. 1996, ch. 394, § 1, p. 1322; am. 2008, ch. 294, § 1, p. 821.

## STATUTORY NOTES

**Amendments.**

This section was amended by two 1996 acts which appear to be compatible and have been compiled together.

The 1996 amendment, by ch. 64, § 1, in subdivision (b), in the second sentence substituted "owners, their employees, agents and animal damage control personnel" for "owners or their employees".

The 1996 amendment, by ch. 394, § 1, in subdivision (a), in the second sentence inserted, "including water rights" following "any property", and added the third and fourth sentences; and rewrote subdivision (a) 3. which read, "Whenever deemed to be in the public interest, authorize or cause the removal or destruction of any dam, house, structure or obstruction erected by any furbearing animals, provided that no liability whatever shall accrue to the department or the director

by reason of any direct or indirect damage arising from such destruction or removal."

The 2008 amendment, by ch. 294, in subsection (b), inserted "or attacking" in the first sentence and "within ten (10) days of being taken" in the second sentence; added subsection (c); and redesignated former subsection (c) as subsection (d).

**Compiler's Notes.**

Section 36-1104, referred to in the next-to-last sentence in subdivision (a)(4), was repealed by S.L. 2009, ch. 201, § 3.

**Effective Dates.**

Section 3 of S.L. 1996, ch. 64 declared an emergency. Approved March 5, 1996.

Section 2 of S.L. 2008, ch. 294 declared an emergency. Approved March 28, 2008.

## JUDICIAL DECISIONS

**Cited in:** State v. Thompson, 136 Idaho 322, 33 P.3d 213 (Ct. App. 2001).

**36-1108. Control of damage by antelope, elk, deer or moose — Compensation for damages.** — (a) Prevention of depredation shall be a priority management objective of the department, and it is the obligation of landowners to take all reasonable steps to prevent property loss from wildlife or to mitigate damages by wildlife. When any antelope, elk, deer or moose is doing damage to or is destroying any property or is about to do so, the owner or lessee thereof may make complaint and report the facts to the director or his designee who shall, within seventy-two (72) hours, investigate the conditions complained of. If it appears that the complaint is well founded and the property of the complainant is being or is likely to be damaged or destroyed by such antelope, elk, deer or moose, the director may:

1. Send a representative onto the premises to control, trap, and/or remove such animals as will stop the damage to said property. Any animals so taken shall remain the property of the state and shall be turned over to the director.
2. Grant properly safeguarded permission to the complainant to control, trap and/or remove such animals. Any animals so taken shall remain the property of the state and shall be turned over to the director.
3. Make an agreement with the owner or lessee to allow continued use of lands by the animals where damage by them has occurred to stored, growing or matured crops on private property whether owned or leased. This agreement may be transacted only after department attempts to resolve the problem by other means have proven unsuccessful. The agreement made under the provisions of this subsection may provide for financial compensation to the owner or lessee. If made, financial compensation under the provisions of this subsection shall be governed by the

provisions of section 36-115, Idaho Code, and shall not be in addition to any payments for the same crop losses from any other source. Compensation for damages under the provisions of this subsection shall be available for damages done to private lands, whether owned or leased, if the owner or lessee allowed hunters reasonable access to the property or through the property to public lands for hunting purposes during the preceding hunting season. This provision shall not negate the provisions of section 36-1602, Idaho Code, relating to the necessity of obtaining permission to enter private land. If necessary, the arbitration panel provided for in subsection (b) of this section shall determine the reasonableness of access allowed.

(b)1. In order to establish eligibility for submission of claims for damages, persons suffering crop damages on privately owned or leased land caused by antelope, elk, deer or moose must:

- (A) Notify the department within seventy-two (72) hours of discovery of damage.
- (B) Follow up verbal notification with a written notice within ten (10) days of the discovery of damages.
- (C) The department shall not be held liable or accountable for any damages occurring more than ten (10) days prior to the initial notification of damage. However, the department may extend the period up to thirty (30) days under exceptional circumstances.

The owner or lessee must have allowed hunters reasonable access to the property or through the property to public lands for hunting purposes during the preceding hunting season, provided such access does not impact on their operations, or the claim for damages shall be disallowed. Compensation for crop damages claims shall not be in addition to any payments for the same crop losses from any other source and shall not include fence or other types of property damage. While fences and irrigation equipment are not subject to claim for payment, the department is allowed to provide support and assistance, including provision of materials to design, construct, and maintain fences for control of depredation. The notice of damages caused must be in written form, shall be in the form of a claim for damages substantially the same as required by section 6-907, Idaho Code, shall be attested to by the claimant under oath, and the claim shall be at least one thousand dollars (\$1,000). The claim shall not be amended after it is filed, provided however, that a claimant may file an additional claim in the event additional damage occurs subsequent to filing the initial claim. The department shall prepare and make available suitable forms for notice and claim for damages. Claims may be submitted only for the fiscal year (July 1 through June 30) in which they occurred. Any person submitting a fraudulent claim shall be prosecuted for a felony as provided in section 18-2706, Idaho Code. For purposes of this subsection, crop damages shall mean damage to plants grown or stored for profit and exclude ornamental plants.

2. Upon receipt by the department, the department shall review the claim, and if approved, pay it as provided in section 36-115, Idaho Code, or order it paid as provided in section 36-115, Idaho Code. Failure on the part of the owner or lessee to allow on-site access for inspection and investigation of alleged losses shall void the claim for damages.

3. In the event the owner or lessee and the department fail to agree on the amount of damages within fifteen (15) business days of the written claim, either party may elect to retain the services of an independent certified insurance adjuster licensed in the state of Idaho to view the affected property and determine the amount of damages. In the event the owner or lessee and the department fail to agree on the amount of damages and neither party elects to retain the services of an independent certified insurance adjuster, provisions of subsection (b)4. of this section shall apply. The independent certified adjuster shall complete his review and determination within twenty (20) days from the date he is retained, and will report his determination in writing by certified mail to the department and to the owner or lessee. Neither the owner or lessee, nor the department, shall disturb the affected property prior to review and determination by the independent insurance adjuster. Costs associated with the services of the independent insurance adjuster shall be divided equally between the owner or lessee and the department, subject to reapportionment of the costs by an arbitration panel pursuant to the provisions of subsection (b)4. of this section. If the department, or the owner or lessee rejects the determination of the adjuster, they shall notify the other party in writing of the rejection within five (5) business days of receipt of the adjuster's determination. In the event that either party rejects the adjuster's determination, the provisions of subsection (b)4. of this section shall apply.

4. Within five (5) business days of a rejection of an adjuster's determination of damages or failure of the owner or lessee and the department to agree on damages when a certified insurance adjuster is not used, the director must convene an arbitration panel. To convene an arbitration panel, the director must, within five (5) business days, appoint the department's representative and notify the landholder of the appointment. The landholder(s) shall, within the next five (5) business days following such notice from the department, appoint his representative and notify the department of the appointment. Within the next five (5) business days, the department representative and the landholder must mutually appoint the third arbitrator. The arbitration panel shall consist of three (3) members, as follows:

- (A) The director of the department of fish and game or his designee;
- (B) The owner or his designee, or the lessee or his designee;
- (C) One (1) member selected by the two (2) members above.

The panel shall convene within thirty (30) days of the selection of the third arbitrator, and render its decision within fourteen (14) days after the hearing. When convened, the arbitration panel shall have the same authority to make on-site inspections as the department. The owner or lessee shall be responsible for payment of the expenses of his appointee; the director shall pay the expenses of his appointee from the expendable big game depredation fund; and the expenses of the third member shall be a joint responsibility of the owner or lessee, and the department. Provided however, the panel is authorized to review the costs associated with retaining the independent insurance adjuster and to determine whether those costs should instead be borne solely by the owner or lessee, solely by

the department, or be apportioned between the owner or lessee and the department. In cases where an independent insurance adjuster was used, the party electing to use the adjuster shall assume the insurance adjuster's determination of damage as their estimate of damage. The panel shall consider the claim submitted by the owner or lessee, and the estimate of damages submitted by the department, and shall select one (1) amount or the other as being the closest to the actual damages sustained by the claimant. The arbitration panel shall report its decision in writing to both the owner or lessee and to the department within ten (10) days of the decision, and the decision of the panel shall be binding on the owner or lessee and the department. The fish and game advisory committee shall develop guidelines to govern arbitration procedures in accordance with chapter 52, title 67, Idaho Code.

(c) Any claim received by the department under the provisions of subsection (b) of this section must be processed by the department within sixty (60) calendar days of receipt. If the claim is approved for payment, payment must be made within forty-five (45) calendar days of such approval. Any damage claim determination by an independent insurance adjuster pursuant to subsection (b)3. of this section, accepted by the parties, must be paid by the department within forty-five (45) calendar days of the determination. If the claim is arbitrated, the arbitration must be completed within one hundred eighty (180) calendar days of filing the claim for such damages.

**History.**

I.C., § 36-1108, as added by 1990, ch. 370, § 6, p. 1007; am. 1994, ch. 218, § 1, p. 679; am. 2004, ch. 189, § 3, p. 588; am. 2005, ch. 403, § 4, p. 1369.

**STATUTORY NOTES****Compiler's Notes.**

Former § 36-1108 was amended and redesignated as § 36-1120 by § 5 of S.L. 1990, ch. 370.

The words enclosed in parentheses so appeared in the law as enacted.

**JUDICIAL DECISIONS****Killing Depredatory Deer.**

Statutory limitations on the killing of predatory deer out of season serve the common welfare of the people of Idaho, and this section provides several means by which citi-

zens may be protected from depredating wildlife without resorting to out-of-season killing. *State v. Thompson*, 136 Idaho 322, 33 P.3d 213 (Ct. App. 2001).

**36-1109. Control of damage by black bears, grizzly bears or mountain lions — Compensation for damage.** — (a) Prevention of depredation shall be a priority management objective of the department, and it is the obligation of landowners to take all reasonable steps to prevent property loss from black bears, grizzly bears or mountain lions or to mitigate damage by such. The director, or his representative, will consult with appropriate land management agencies and landusers before transplanting or relocating any black bear, grizzly bear or mountain lion.

(b) When any black bear, grizzly bear or mountain lion has done damage to or is destroying livestock on public, state, or private land, whether owned

or leased, or when any black bear or grizzly bear has done damage to or is destroying berries or honey on private land, the owner or his representative of such livestock shall, for the purposes of filing a claim, report such loss to a representative of the U.S. department of agriculture animal plant and health inspection services/animal damage control (APHIS/ADC) who shall, within seventy-two (72) hours, investigate the conditions complained of. For purposes of this section, livestock shall be defined as domestic cattle, sheep, and goats. For purposes of this section, grizzly bear shall be defined as any grizzly bear not protected by the federal endangered species act. If it appears that the complaint is well founded and livestock, berries or honey of the complainant has been damaged or destroyed by such black bear, grizzly bear or mountain lion, APHIS/ADC shall so inform the owner or his representative of the extent of physical damage or destruction in question. The owner shall provide the director or the department's regional office with the APHIS/ADC determination of damages or destruction. The physical damages, without establishing a monetary value thereon, as determined by the APHIS/ADC representative shall be final, and shall be binding upon the owner or his representative and on the department.

(c) Any claim for damages must be in written form, shall be in the form of a claim for damages substantially the same as required in section 6-907, Idaho Code, shall be attested to by the claimant under oath, and the claim shall be for an amount of at least one thousand dollars (\$1,000) in damages per occurrence. The department shall prepare and make available suitable forms for claims for damages. Claims may be submitted only for the fiscal year (July 1 through June 30) in which they occurred. Any person submitting a fraudulent claim shall be prosecuted for a felony as provided in section 18-2706, Idaho Code.

1. Upon receipt by the department, the department shall review the claim, and if approved, pay it as provided in section 36-115, Idaho Code. Failure on the part of the owner or representative to allow on-site access shall negate the claim for damages.

2. If the department accepts the claim for damages as submitted by the owner or his representative, the department may approve the claim for payment, or may make a counter offer. If the owner or his representative rejects the department's counter offer, this rejection or refusal must be in writing and submitted within five (5) business days. The value of the damage or destruction will then be determined pursuant to the provisions of subsection (b)3. of section 36-1108, Idaho Code, and, in circumstances so provided for by the provisions of subsection (b)3. of section 36-1108, Idaho Code, pursuant to the provisions of subsection (b)4. of section 36-1108, Idaho Code. Any claim received by the department under the provisions of this section must be processed by the department within sixty (60) calendar days of receipt. If the claim is approved for payment, the claim must be immediately forwarded to the department of administration for payment. Any damage claim determination by an independent insurance adjuster, accepted by the parties, must be paid by the department within forty-five (45) days of the determination. If the claim is arbitrated, the arbitration must be completed within one hundred eighty (180) days of filing the claim for such damages.

**History.**

I.C., § 36-1109, as added by 1990, ch. 370, § 7, p. 1007; am. 1994, ch. 218, § 2, p. 679;

am. 2002, ch. 278, § 1, p. 814; am. 2004, ch. 189, § 4, p. 588; am. 2008, ch. 101, § 1, p. 283.

**STATUTORY NOTES****Amendments.**

The 2008 amendment, by ch. 101, in the section heading and throughout subsections (a) and (b), inserted references to "grizzly bears"; and added the third sentence in subsection (b).

**Federal References.**

The federal endangered species act, referred to in subsection (b), is codified as 16 U.S.C.S. § 1531 et seq.

**Compiler's Notes.**

The letters "APHIS/ADC" enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 2002, ch. 278 declared an emergency retroactively to January 1, 2001 and was approved March 26, 2002.

Section 2 of S.L. 2008, ch. 101 declared an emergency. Approved March 14, 2008.

**36-1110. Control of damage by grazing wildlife — Compensation for damage.** — (a) Prevention of depredation shall be a priority management objective of the department, and it is the obligation of landowners to take all reasonable steps to prevent property loss from grazing wildlife on private lands, whether owned or leased, or to mitigate damage by such. When any grazing wildlife is doing damage to or is destroying forage on private lands, whether owned or leased, the owner or lessee thereof may make a complaint and report the facts to the director or his designee who shall, within seventy-two (72) hours, investigate the conditions complained of. If it appears that the complaint is well founded and the forage is being or is likely to be damaged or destroyed or consumed by grazing wildlife, the owner or lessee shall contract with a qualified range management consultant to prepare an estimate of depredation based on his inspection. The cost of the consultant shall be paid by the owner or lessee. After the initial complaint, it shall be the responsibility of both the department and the owner or lessee to jointly design and implement a mutually agreeable method of determining forage utilization and damage or loss due to wildlife through the use of exclosure cages or other devices. For purposes of this subsection, "forage damage" shall mean growing or matured plants grown for livestock feed.

(b) Claims submitted under the provisions of this section shall be limited to loss of forage on private lands, whether owned or leased, and shall be submitted and processed under the provisions of section 36-1108(b), Idaho Code, and approved claims shall be paid under the provisions of section 36-115(f), Idaho Code.

**History.**

I.C., § 36-1110, as added by 1990, ch. 370, § 8, p. 1007; am. 1994, ch. 218, § 3, p. 679.

**36-1111 — 36-1119. [Reserved.]**

**36-1120. Penalties.** — (a) Any person convicted of violating any of the provisions of this title with respect to methods of take, seasons or limits relating to mountain lion, shall be fined in a sum of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each

offense and/or by commitment to jail for a period of not more than six (6) months.

(b) Any person convicted of violating the provisions of this chapter with respect to the protection of buffalo and caribou shall be fined in a sum of not less than one hundred fifty dollars (\$150) nor more than one thousand dollars (\$1,000) and/or by commitment to jail for not more than six (6) months.

(c) Any person convicted of violating any of the provisions of this chapter for which no penalty is specified shall be subject to the penalty prescribed by section 36-1402, Idaho Code.

**History.** and redesig. 1990, ch. 370, § 5, p. 1007; am. I.C., § 36-1108, as added by 1976, ch. 95, 1992, ch. 81, § 30, p. 222. § 2, p. 315; am. 1985, ch. 188, § 2, p. 484; am.

#### STATUTORY NOTES

**Compiler's Notes.**

This section was formerly compiled as § 36-1108.

## CHAPTER 12

### CHECK STATIONS — WASTE OF WILDLIFE

SECTION.

36-1201. Production of wildlife for inspection  
— Stop at checking stations —  
License must be on person.

SECTION.

36-1202. Wasteful destruction of wildlife or  
mutilation unlawful.

**36-1201. Production of wildlife for inspection — Stop at checking stations — License must be on person.** — No fisherman, hunter or trapper shall refuse or fail to:

(a) Inspection of Wildlife. Upon request of the director, produce for inspection any wildlife in his possession.

(b) Check Stations. Stop and report at a wildlife check station encountered on his route of travel when directed to do so by personnel on duty. Such direction may be accomplished by signs prominently displayed along the route of travel indicating those persons required to stop.

(c) License to be Carried and Exhibited on Request. Have the proper required license, temporary license, authorization number or other information required by rule, on his person at all times when hunting, fishing or trapping and produce the same for inspection upon request of a conservation officer or any other person authorized to enforce fish and game laws. However, no person charged with violating this subsection shall be convicted if he produces in court a license, theretofore issued to him and valid at the time of his arrest.

**History.**

I.C., § 36-1201, as added by 1976, ch. 95, 1992, ch. 81, § 31, p. 222; am. 1997, ch. 220, § 2, p. 315; am. 1979, ch. 96, § 1, p. 235; am. § 2, p. 651.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

§§ 36-1201 to 36-1208, was repealed by S.L. 1976, ch. 95, § 1.

**Prior Laws.**

Former title 36, chapter 12, comprised of

**JUDICIAL DECISIONS****Check stations.**

Although this section provides statutory authority supporting the use of check stations by the department of fish and game to check fish and game licenses and lawful possession of wildlife, where a checkpoint was set up with the department inviting other law enforcement agencies to participate and was not confined to the advancement of the state's interest in the conservation of wildlife and was without specific policy or procedures to be followed, it violated the Fourth and Fourteenth Amendments to the U.S. Constitution

and resulted in the unreasonable search and seizure of defendant charged with driving under the influence. *State v. Medley*, 127 Idaho 182, 898 P.2d 1093 (1995).

The check station set up by the wildlife officer was narrowly focused to advance the public's interest in wildlife preservation, protection, perpetuation and management, and was statutorily authorized and in compliance with § 36-103 and this section. *State v. Thurman*, 134 Idaho 90, 996 P.2d 309 (Ct. App. 1999).

**36-1202. Wasteful destruction of wildlife or mutilation unlawful.**

— It shall be unlawful to:

(a) Waste. Through carelessness, neglect or otherwise, to allow or cause the waste of edible portions of any game animal, except for mountain lion, black bear or gray wolf. "Edible portions" are defined as follows:

1. Game birds. Breasts;
2. Big game animals. Hind quarters, front quarters, loins and tenderloins;
3. Game fish. Fillets of fish, hind legs of bullfrogs and tails of crayfish;
4. Upland game animals. Hind legs, front legs and loins of rabbits and hares.

(b) Destruction — Mutilation. Capture or kill any game animal and detach or remove from the carcass only the head, hide, antlers, horns or tusks and leave the edible portions to waste, except mountain lion, black bear or gray wolf.

(c) Prima Facie. It shall be prima facie evidence of a violation of the provisions of this section:

1. To fail to properly dress and care for any game animal killed by him, except mountain lion, black bear or gray wolf; and
2. If the edible portions described in subsection (a) of this section are reasonably accessible, to fail to take or transport same to his camp within twenty-four (24) hours.

(d) Livestock owners, their employees, agents and animal damage control personnel in protecting livestock as provided in subsection (b) of section 36-1107, Idaho Code, are exempt from subsections (b) and (c) of this section.

(e) For purposes of this section, the term "game animal" shall mean game birds, big game animals, upland game animals and game fish.

**History.**

I.C., § 36-1202, as added by 1976, ch. 95, § 2, p. 315; am. 1994, ch. 88, § 1, p. 205; am.

1996, ch. 64, § 2, p. 186; am. 2010, ch. 93, § 1, p. 178.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor violation of fish and game laws, § 36-1402.

rewrote subsections (a) through (c) to the extent that a detailed comparison is impracticable; and added subsection (e).

**Amendments.**

The 2010 amendment, by ch. 93, rewrote the introductory language, which formerly read: "It is a misdemeanor for any person to";

**Effective Dates.**

Section 3 of S.L. 1996, ch. 64 declared an emergency. Approved March 5, 1996.

**JUDICIAL DECISIONS****ANALYSIS****Accomplice.**

Person who kills animal.

**Accomplice.**

In a prosecution for wasting a game animal in violation of this section, a witness' mere presence during the events for which the defendant was convicted and his singular act of moving a more culpable hunting companion's vehicle at the latter's insistence fell far short of establishing that the witness was an accomplice as a matter of law, and the jury rationally found that his role was more akin to that of an acquiescing bystander; thus, conviction could be had on the witness' uncor-

roborated testimony. State v. Ruiz, 115 Idaho 12, 764 P.2d 89 (Ct. App. 1988).

**Person Who Kills Animal.**

This section, prohibiting the waste of game animals, is silent with regard to any requirement that the person who is charged with violation of this section must also be the same person who killed the animal; thus, although the defendant was found not guilty of illegally shooting at or killing a deer, but guilty of wasting it, the verdicts on all the charges were rationally reconcilable. State v. Ruiz, 115 Idaho 12, 764 P.2d 89 (Ct. App. 1988).

**CHAPTER 13****ENFORCEMENT AND APPLICATION OF FISH AND GAME LAW****SECTION.**

36-1301. Power and duty of officers — Official badge — Who may wear — Issuance upon retirement.  
36-1302. Arrests — Jurisdiction — Bail — Trial.

**SECTION.**

36-1303. Right of search.  
36-1304. Seizure of equipment and wildlife.  
36-1305. Presumption from possession.

**36-1301. Power and duty of officers — Official badge — Who may wear — Issuance upon retirement.** — (1) Authorized Officers. The director, all conservation officers and other classified department employees, and all sheriffs, deputy sheriffs, forest supervisors, marshals, police officers, state forest department officers, and national forest rangers shall have statewide jurisdiction and it is hereby made their duty to enforce the provisions of the Idaho fish and game code.

(2) Authority and Limitations as Peace Officers. All conservation officers who receive certification from the Idaho peace officer standards and training advisory council shall have all the authority given by statute to peace officers of the state of Idaho. All other classified employees appointed by the director shall have the power of peace officers limited to:

- (a) The enforcement of the provisions of title 36, Idaho Code, and commission rules and proclamations promulgated pursuant thereto.
  - (b) The arrest of persons having domestic animals unlawfully in their possession.
  - (c) The enforcement of the provisions of chapter 70, title 67, Idaho Code, provided that such authority is exercised in cooperation with sheriffs of the respective counties.
  - (d) Responding to express requests from other law enforcement agencies for aid and assistance in enforcing other laws. For purposes of this section, such a request from a law enforcement agency shall mean only a request for assistance as to a particular and singular violation or suspicion of violation of law, and shall not constitute a continuous request for assistance outside the purview of enforcement of title 36, Idaho Code.
- (3) Additional Authority and Duties. Said officers and employees shall have additional peace officer power, but not constituting an obligation beyond their regular course of duty, relative to:
- (a) The enforcement of the provisions of title 38, Idaho Code (Idaho forestry act), as authorized by section 38-133, Idaho Code.
  - (b) The enforcement of provisions of chapter 71, title 67, Idaho Code.
  - (c) The enforcement of the provisions of sections 18-3906 and 18-7031, Idaho Code, relating to littering.
  - (d) The enforcement of the provisions of section 42-3811, Idaho Code, relating to the enforcement of certain provisions of chapter 38, title 42, Idaho Code.

(4) Official Badge — Who May Wear. No person who is not at the time a classified employee or conservation officer, duly authorized and commissioned by the director, shall wear or exhibit in public an official badge of the department of fish and game of the state of Idaho.

(5) Issuance Upon Retirement. The director may award to a conservation officer, upon retirement, that officer's badge, duty weapon and handcuffs, providing that a committee of three (3) of the conservation officer's peers certifies to the director that the retiring officer has served meritoriously for a minimum of fifteen (15) years and should therefore be so honored.

#### **History.**

I.C., § 36-1301 as added by 1976, ch. 95, § 2, p. 315; am. 1979, ch. 134, § 1, p. 428; am. 1980, ch. 331, § 1, p. 854; am. 1988, ch. 265,

§ 567, p. 549; am. 1992, ch. 81, § 32, p. 222; am. 1998, ch. 170, § 10, p. 567; am. 2005, ch. 33, § 1, p. 147.

#### **STATUTORY NOTES**

##### **Cross References.**

Penalty for misdemeanor generally, § 18-113; under fish and game law, § 36-1402.

title 36, Idaho Code, as enacted by S.L. 1975, ch. 95, § 2.

The reference to the Idaho peace officer standards and training advisory council, in the introductory paragraph in subsection (2), should probably be to the Idaho peace officers standards and training council. See § 19-5101 et seq.

Subdivision (3)(a) defines the Idaho forestry act as being all of title 38, Idaho Code. In fact, the Idaho forestry act is codified as chapter 1, title 38, Idaho Code, and § 38-133 addresses

##### **Prior Laws.**

Former title 36, chapter 13, comprised of §§ 36-1301 to 36-1308, was repealed by S.L. 1976, ch. 95, § 1.

##### **Compiler's Notes.**

The Idaho fish and game code, referred to at the end of subsection (1), is not defined statutorily. It is believed to be a reference to all of

enforcement of the criminal provisions of that chapter.

The words in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 5 of S.L. 1980, ch. 331 declared an emergency. Approved April 2, 1980.

Section 586 of S.L. 1988, ch. 265 provided that the act should take effect on and after January 1, 1988.

**36-1302. Arrests — Jurisdiction — Bail — Trial.** — (a) Arrests — Citations. All arrests pursuant to the provisions of title 36, Idaho Code, may be effected by:

1. Taking the offender into custody for immediate appearance before any magistrate of the state having jurisdiction over the alleged offense; or

2. Issuing a citation to the offender to appear before such magistrate.

(A) Said citation shall bear the name and address of the offender, the date, time and place for his appearance before a magistrate, the offense charged, the approximate location where and the approximate time when the offense was committed and other such essential descriptive information related to the offense as prescribed by the director.

(B) A citation shall be issued only by mutual agreement of the officer and the accused as evidenced by both their signatures on said citation. The citation shall specify appearance before a magistrate court having jurisdiction over the alleged offense in any county mutually agreed to be convenient. The accused shall be given a copy thereof and thereupon may be released from custody.

(C) No accused shall fail to appear at the time and place specified in the citation. Any such failure to appear shall be cause for issuance of a warrant for his arrest.

(b) Actions — How Brought. All actions brought for violation of the provisions of this title shall be in the name of the state of Idaho and shall be prosecuted by an attorney representing the county having jurisdiction.

(c) Bond — Waiver of Trial — Guilty Plea. For the purpose of posting bail bonds or cash bail, waivers of trial or entering pleas of guilty, the officer shall take the defendant before any magistrate or other designated person within the state who has sufficient jurisdiction to accept the bond, waiver, or plea.

(d) Trial. Upon a plea of not guilty by the defendant before a court in a county other than where the offense was committed, the action shall be returned for trial to a court in the county where the offense is alleged to have occurred.

**History.**

I.C., § 36-1302, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 33, p. 222.

**36-1303. Right of search.** — Officers are hereby vested with authority and it is their duty to:

(a) Inspection of Storage Facilities. Inspect all depots, cars, warehouses, cold storage rooms, warerooms, restaurants, hotels, motels, markets, air terminals and all baggage, packages, and packs held either for sale, shipment or storage which they shall have probable cause to believe contain evidence of the violation of any provisions of this title.

(b) Right of Search. Search, with or without a warrant, the tents, wagons, autos, boats, aircraft (private or chartered), campers, camp trailers, or other vehicles, camps, baggage or packs of any person in the state, when they shall have probable cause to believe such person has in his possession any unlawfully taken wildlife or any equipment or substances used to take such wildlife.

**History.**

I.C., § 36-1303, as added by 1976, ch. 95,  
§ 2, p. 315.

**JUDICIAL DECISIONS****DECISIONS UNDER PRIOR LAW****ANALYSIS**

Probable cause.

Time search commences.

**Probable Cause.**

Since the carcass of the elk on defendant's pick-up truck was in plain view of the arresting officer following the stopping of defendant's motor vehicle, probable cause existed for the arrest and seizure of the elk carcass. State v. Brumley, 95 Idaho 919, 523 P.2d 522 (1974).

**Time Search Commences.**

Where officer, after seeing the defendant's

truck in a canyon at a time and place for which there was no logical reason for him to be there, formed the intent to investigate and pursue the truck, and after stopping the truck and observing the carcass of an elk in plain view searched the truck and arrested defendants, the search of the truck could not be said to have been initiated at the time of the formation of the intent to investigate and pursue the vehicle. State v. Brumley, 95 Idaho 919, 523 P.2d 522 (1974).

**36-1304. Seizure of equipment and wildlife.** — (a) Seizure of Evidence — Confiscation of Unlawfully Used Equipment. The director and all other officers empowered to enforce fish and game laws are hereby authorized at any time to seize and hold as evidence any powder, explosives, lime, toxicants, drugs, spears, traps, snares, guns, tackle, nets, seines or any other hunting, trapping or fishing equipment or devices used in the commission of a violation of any provisions of this title or rules or proclamations promulgated pursuant thereto, provided that all lawful traps, guns, spears, tackle, nets and seines taken from the possession of any person arrested for a violation of this title and held as evidence in any prosecution resulting from such arrest shall not be subject to confiscation but the same shall be returned to the person from whom taken when no longer needed as evidence. Provided, however, if it appears from the evidence before the magistrate hearing the case that the powder, explosive, lime, toxicants, drugs, or other unlawful means and devices were used or were about to be used for the unlawful taking or killing of wildlife, said magistrate shall order the same confiscated and sold by the director at public sale, the proceeds therefrom turned into the fish and game account. Any guns, fishing tackle, nets, traps or other equipment used in the taking of wildlife unlawfully and for which no lawful owner can be determined or any such equipment seized as evidence in a case and for which an owner is known, if not claimed within six (6) months following the final disposition of the case in question, shall be deemed to be the property of the fish and game

department; provided, that this shall not occur unless written notice is given to the lawful owner, when known, by registered mail to his last known address within thirty (30) days after the final disposition of the case. Equipment so obtained may be sold by the department unless it would be unlawful for the general public to own or possess such equipment. Any proceeds from the sale of such equipment that would be lawful for the general public to own or possess, shall be deposited in the fish and game account.

(b) Unlawfully Taken Wildlife — Seizure, Confiscation, Disposition.

(i) The director or any other officer empowered to enforce the fish and game laws may at any time seize and take into his custody any wildlife or any portion thereof which may have been taken unlawfully, or which may be unlawfully in the possession of any person. If it appears from the evidence before the magistrate hearing the case that said wildlife was unlawfully taken, the magistrate shall:

1. Order the same confiscated or sold by the director and the proceeds deposited in the fish and game account; or
2. In his discretion, order such confiscated wildlife given to a designated tax-supported, nonprofit or charitable institution or indigent person.

(ii) Any person having unlawfully taken wildlife that is the subject of a sale by the director shall be prohibited from purchasing the unlawfully taken wildlife or any portion thereof. Provided further, no person shall knowingly purchase unlawfully taken wildlife or any portion thereof on behalf of any person who has unlawfully taken the wildlife that is the subject of the sale. Any violation of this subsection (b)(ii) shall be considered an illegal purchase or offer to purchase wildlife, or parts thereof, which has been unlawfully killed or taken.

(c) Unclaimed Wildlife — Seizure, Disposition. All carcasses, hides, pelts or portions of any wildlife protected by the provisions of this title which are deemed to be unclaimed or abandoned may be seized by the director or any other officer empowered to enforce game laws and, upon being so seized, the director shall:

1. Sell same at public or private sale and deposit the proceeds therefrom in the fish and game account.
2. In his discretion, order such wildlife to be given to a designated tax-supported nonprofit or charitable institution or indigent person.

(d) Receipt Required. A written receipt must be executed for all equipment or wildlife disposed of in accordance with the provisions of this section.

**History.**

I.C., § 36-1304, as added by 1976, ch. 95, § 2, p. 315; am. 1982, ch. 305, § 1, p. 767; am.

1998, ch. 170, § 11, p. 567; am. 2009, ch. 187,

§ 1, p. 608.

**STATUTORY NOTES**

**Cross References.**

Confiscation of game in possession of fur buyer or taxidermist, § 36-606.

State fish and game account, § 36-107.

**Amendments.**

The 2009 amendment, by ch. 186, added the subsection (b)(i) designation and subsection (b)(ii).

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

**Power to Seize.**

Game warden (now director) has general power to take possession of game animals, or any part thereof, from any person who has in

his possession such animals in excess of the number which he may legally have. *Binkley v. Stephens*, 16 Idaho 560, 102 P. 10 (1909).

**36-1305. Presumption from possession.** — Except as in this title otherwise provided, the possession of any wildlife during the closed season for such wildlife shall be *prima facie* evidence that the same was taken unlawfully.

**History.**

I.C., § 36-1305, as added by 1976, ch. 95, § 2, p. 315.

## JUDICIAL DECISIONS

### DECISIONS UNDER PRIOR LAW

**Indian Possessing.**

Mere possession of a deer carcass by a Nez Perce Indian during closed season did not raise a presumption that deer was unlawfully

taken, since Indian was not amenable to the closed season. *State v. Powaukee*, 78 Idaho 257, 300 P.2d 488 (1956).

## CHAPTER 14

## GENERAL PENAL PROVISIONS

SECTION.

36-1401. Violations.

36-1402. Penalty — Infraction — Misdemeanor — Felony — Revocation of license — Disposition of moneys.

36-1403. Magistrate to report revocations.

36-1404. Unlawful killing, possession or waste of wild animals, birds and fish — Reimbursable

SECTION.

damages — Schedule — Assessment by magistrates — Installment payments — Default judgments — Disposition of moneys.

36-1405. Additional fine imposed.

36-1406. Statute of limitation for misdemeanors.

36-1407. Processing fee imposed on violators.

**36-1401. Violations.** — (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules or proclamations promulgated pursuant thereto is guilty of an infraction:

1. Statutes.

- (A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.
- (B) Chumming as set forth in section 36-902(e), Idaho Code.
- (C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.
- (D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.

- (E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.
- (F) Own, possess or harbor any dog found running loose and which is tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)6.(B), Idaho Code.
- (G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.
- (H) Hunt migratory game birds without having in possession a license validated for the federal migratory bird harvest information program permit as set forth in section 36-409(k), Idaho Code.
- (I) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.
- (J) Hunt migratory game birds with a shotgun capable of holding more than three (3) shells as provided and incorporated in section 36-1102(b), Idaho Code.

## 2. Rules or Proclamations.

- (A) Fish from a raft or boat with motor attached in waters where motors are prohibited.
- (B) Fish with hooks larger than allowed in that water.
- (C) Fish with barbed hooks in waters where prohibited.
- (D) Exceed any established bag limit for fish by one (1) fish, except bag limits for anadromous fish, landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout.
- (E) Fish with more than the approved number of lines or hooks.
- (F) Fail to leave head and/or tail on fish while fish are in possession or being transported.
- (G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.
- (H) Fail to attend fishing line and keep it under surveillance at all times.
- (I) Fail to comply with mandatory check and report requirements.
- (J) Fail to leave evidence of sex or species attached as required on game birds.
- (K) Hunt or take migratory game birds or upland game birds with shot exceeding the allowable size.
- (L) Fail to release, report or turn in nontarget trapped animals.
- (M) Fail to complete required report on trapped furbearer.
- (N) Fail to present required furbearer animal parts for inspection.
- (O) Fail to attach identification tags to traps.
- (P) Possess not more than one (1) undersized bass.
- (Q) Park or camp in a restricted area, except length of stay violations.
- (R) Fail to leave evidence of sex attached as required on game animals.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules or proclamations promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.
2. Releasing into the wild, without a permit from the director, any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.
3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife within a twelve (12) month period which has a single or combined reimbursable damage assessment of more than one thousand dollars (\$1,000), as provided in section 36-1404, Idaho Code.
4. Conviction within ten (10) years of three (3) or more violations of the provisions of this title, penalties for which include either or both a mandatory license revocation or a reimbursable damage assessment.

**History.**

I.C., § 36-1401, as added by 1976, ch. 95, § 2, p. 315; am. 1991, ch. 44, § 2, p. 83; am. 1991, ch. 130, § 1, p. 285; am. 1992, ch. 172, § 1, p. 536; am. 1994, ch. 94, § 2, p. 213; am.

1997, ch. 270, § 1, p. 781; am. 1997, ch. 347, § 1, p. 1032; am. 1998, ch. 58, § 1, p. 214; am. 1998, ch. 170, § 12, p. 567; am. 1999, ch. 32, § 3, p. 63; am. 2000, ch. 211, § 31, p. 538.

**STATUTORY NOTES****Prior Laws.**

Former title 36, chapter 14, comprised of §§ 36-1401 to 36-1412, was repealed by S.L. 1976, ch. 95, § 1.

**Amendments.**

This section was amended by two 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 58, § 1, substituted "license validated for the" for "signed" in paragraph (a)1.(H) and substituted "a license validated for the upland game permit" for "an upland game permit" in paragraph (a)1.(I).

The 1998 amendment, by ch. 170, § 12, in subsection (a) inserted "or proclamations" preceding "promulgated pursuant thereto"; in subsection (a)2., added "or Proclamations" following "Rules"; and in subsection (b) inserted "or proclamations" preceding "promulgated pursuant thereto".

This section was amended by two 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 270, § 1, in subsection (c)3. inserted "within a twelve (12)

month period" following "or species of wildlife" and in subsection (c)4. substituted "ten (10)" for "five (5)".

The 1997 amendment, by ch. 347, § 1, in subsection (a)1. added paragraph (K), in subsection (a)2., in paragraph (D) inserted "by one (1) fish," following "Exceed any established bag limit for fish", inserted "bag limits" preceding "anadromous" and substituted "landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout" for "bag limits, by two (2) fish" following "anadromous fish"; in paragraph (K) substituted "or upland game birds with shot exceeding the allowable size" for "while in possession of shot other than steel shot in a steel shot zone"; and substituted the present paragraph (P) for one which read, "Trap with illegal bait or bait set illegally." and added paragraphs (Q) and (R).

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**JUDICIAL DECISIONS****Not Unconstitutionally Vague.**

Sections 36-202(h) and 36-1404(a) and subsection (c) of this section are not unconstitutionally vague due to a failure to define the Boone and Crockett measuring standards for

determining big game trophy animals because a definition of every term in a criminal statute is not required. State v. Casano, 140 Idaho 461, 95 P.3d 79 (Ct. App. 2004).

**36-1402. Penalty — Infraction — Misdemeanor — Felony — Revocation of license — Disposition of moneys.** — (a) Infraction Penalty. Any person who pleads guilty to or is found guilty of an infraction of this code or rules or proclamations promulgated pursuant thereto, shall be punished in accordance with the provisions of the Idaho infractions rules.

(b) Misdemeanor Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a misdemeanor under the provisions of this title or rules or proclamations promulgated pursuant thereto shall, except in cases where a higher penalty is prescribed, be fined in a sum of not less than twenty-five dollars (\$25.00) nor more than one thousand dollars (\$1,000) and/or by commitment to jail for not more than six (6) months. The minimum fine, per animal, fish or bird, for the illegal taking, illegal possession or the illegal waste of the following animals, fish or birds shall be as indicated below:

Animal, Fish or Bird	Minimum Fine
Bighorn sheep, mountain goat and moose	\$500
Elk	\$300
Any other big game animal	\$200
Wild turkey, swan and sturgeon	\$200
Chinook salmon, wild steelhead and bull trout	\$100
Any other game bird, game fish or furbearer	\$ 25

(c) Felony Penalty. Any person entering a plea of guilty for, found guilty of or convicted of a felony under the provisions of this title shall be punished in accordance with section 18-112, Idaho Code. Provided further, that the judge hearing the case shall forthwith revoke for life, the hunting, fishing or trapping license and privileges of any person who, within a five (5) year period, pleads guilty to, is found guilty of or is convicted of three (3) or more felony violations of the provisions of this title.

(d) License Revocation. Any person entering a plea of guilty or being found guilty or convicted of violating any of the provisions of this title, or who otherwise fails to comply with the requirements of a citation in connection with any such offense, may, in addition to any other penalty assessed by the court, have his hunting, fishing, or trapping privileges revoked for such period of time as may be determined by the court not to exceed three (3) years, except that violations classified as felonies under section 36-1401, Idaho Code, or as flagrant violations as defined in subsection (e) of this section, shall authorize the court to impose license revocations for periods of time up to and including life, with said period beginning on the date of conviction, finding of guilt or the entry of the plea of guilty. Provided further, that the magistrate hearing the case shall forthwith revoke the hunting, fishing, or trapping privileges for a period of not less than one (1) year for any of the following offenses:

1. Taking or possessing upland game birds, migratory waterfowl, salmon, steelhead, sturgeon, or any big game animal during closed season.
2. Exceeding the daily bag or possession limit of upland game birds, migratory waterfowl or big game animals.
3. Taking any fish by unlawful methods as set forth in section 36-902(a) or (c), Idaho Code.

4. Unlawfully purchasing, possessing or using any license, tag or permit as set forth in section 36-405(c), Idaho Code.
5. Trespassing in violation of warning signs or failing to depart the real property of another after notification as set forth in section 36-1603, Idaho Code.
6. The unlawful release of any species of live fish into any public body of water in the state. For purposes of this paragraph, an "unlawful release of any species of live fish" shall mean a release of any species of live fish, or live eggs thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being released from a trap at the same time and place where caught.

Provided further, that the magistrate hearing the case of a first time hunting violation offender under the age of twenty-one (21) years may require that the offender attend a remedial hunter education course at the offender's expense. Upon successful completion of the course, the remainder of the revocation period shall be subject to a withheld judgment so long as the offender is not convicted of any additional hunting violations during the period. The cost of the course shall be seventy-five dollars (\$75.00) to be paid to the department. The commission shall establish by rule the curriculum of the hunter education remedial course.

The revocation shall consist of cancellation of an existing license for the required length of time and/or denial of the privilege of purchasing an applicable license for the length of time required to meet the revocation period decreed. In the case of persons pleading guilty, convicted or found guilty of committing multiple offenses, the revocation periods may run consecutively. In the case of pleas of guilty, convictions or findings of guilt involving taking big game animals during closed season or exceeding the daily bag or possession limit of big game, the magistrate hearing the case shall revoke the hunting, fishing or trapping privileges of any person convicted or found guilty of those offenses for a period of not less than one (1) year for each big game animal illegally taken or possessed by the person convicted or found guilty.

It shall be a misdemeanor for any person to hunt, fish, or trap or purchase a license to do so during the period of time for which such privilege is revoked.

For the purpose of this title, the term "conviction" shall mean either a withheld judgment or a final conviction.

(e) **Flagrant Violations.** In addition to any other penalties assessed by the court, the magistrate hearing the case shall forthwith revoke the hunting, fishing or trapping privileges, for a period of not less than one (1) year and may revoke the privileges for a period up to and including the person's lifetime, for any person who enters a plea of guilty, who is found guilty, or who is convicted of any of the following flagrant violations:

1. Taking a big game animal after sunset by spotlighting, with use of artificial light, or with a night vision enhancement device.
2. Unlawfully taking two (2) or more big game animals within a twelve (12) month period.

3. Taking a big game animal with a rimfire or centerfire cartridge firearm during an archery or muzzleloader only hunt.

4. Hunting, fishing, trapping or purchasing a license when license privileges have been revoked pursuant to this section or section 36-1501, Idaho Code.

5. Taking any big game animal during a closed season.

6. Any felony violation provided in section 36-1401, Idaho Code.

(f) For purposes of the wildlife violator compact, section 36-2301, Idaho Code, et seq., the department shall:

1. Suspend a violator's license for failure to comply with the terms of a citation from a party state. A copy of a report of failure to comply from the licensing authority of the issuing state shall be conclusive evidence.

2. Revoke a violator's license for a conviction in a party state. A report of conviction from the licensing authority of the issuing state shall be conclusive evidence.

(g) Disposition of Fines and Forfeitures. Distribution of fines and forfeitures remitted shall be in accordance with section 19-4705, Idaho Code.

#### **History.**

I.C., § 36-1402, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 92, § 4, p. 171; am. 1979, ch. 95, § 1, p. 234; am. 1981, ch. 42, § 1, p. 64; am. 1984, ch. 112, § 1, p. 256; am. 1985, ch. 188, § 3, p. 484; am. 1987, ch. 176, § 1, p. 349; am. 1987, ch. 261, § 1, p. 552; am. 1990, ch. 4, § 1, p. 6; am. 1990, ch. 5, § 1, p. 9; am. 1990, ch. 364, § 2, p. 988; am. 1991, ch. 49, § 3, p. 87; am. 1991, ch. 128, § 1, p. 281; am. 1992, ch. 172, § 2, p. 536; am. 1992, ch. 216, § 1, p. 651; am. 1995, ch. 318, § 1, p. 1080; am. 1997, ch. 219, § 1, p. 647; am. 1997, ch. 270, § 2, p. 781; am. 1997, ch. 365, § 1, p. 1076; am. 1997, ch. 379, § 1, p. 1209; am. 1998, ch. 170, § 13, p. 567; am. 1998, ch. 251, § 1, p. 818; am. 2000, ch. 256, § 1, p. 724; am. 2005, ch. 34, § 1, p. 148.

#### **STATUTORY NOTES**

#### **Amendments.**

This section was amended by two 1992 acts which appear to be compatible and have been compiled together.

The 1992 amendment, by ch. 172, § 2, added the second sentence in subsection (c).

The 1992 amendment, by ch. 216, § 1, in subdivision (d)(1). added the word "sturgeon."

This section was amended by four 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 219, § 1, in subsection (b) in the list at the end of the subsection inserted "wild steelhead and bull trout" following "Chinook salmon".

The 1997 amendment, by ch. 270, § 2, in subsection (b) in the list at the end of the subsection in the third item, substituted "Any other big game animal" for "Bear and pronghorn antelope", and added "Any other game bird, game fish or furbearer \$25"; in subsection (d) in the first sentence inserted "except that violations classified as felonies under section 36-1401, Idaho Code, or as flagrant violations as defined in subsection (e) of this section, shall authorize the court to impose license revocations for periods of time up to and including life, with" following "not to exceed three (3) years," and in the second

sentence deleted "from the date of such conviction, finding of guilt or the entry of the plea of guilty, of any person who is convicted of, found guilty of or enters a plea of guilty" following "not less than one (1) year"; deleted paragraphs 6. and 7. which read: "6. The unlawful sale or purchase of wildlife as set forth in section 36-501, Idaho Code. 7. Taking any game with a firearm during an archery only season." following paragraph 5. and in the next to last paragraph deleted following "revoked" "by order of any court of this state. Any person pleading guilty, found guilty or convicted thereof shall be fined in an amount of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by commitment to jail for not more than six (6) months or by both such fine and commitment. Provided further, that the period of revocation of such privileges shall be extended an additional amount of time equal to the original revocation"; added the present subsection (e) and renumbered former subsections (e) and (f) as the present subsections (f) and (g).

The 1997 amendment, by ch. 365, § 1, in subsection (d) added a paragraph 8. Since the amendment of the section by ch. 270, § 2 deleted former paragraphs 6. and 7., a brack-

eted 6. has been inserted by the compiler preceding 8.

The 1997 amendment, by ch. 379, § 1, in the second paragraph of subsection (d) added the present third sentence and in the present fourth sentence deleted "and cost" following "curriculum".

This section was amended by two 1998 acts which appear to be compatible and have been compiled together.

The 1998 amendment, by ch. 170, § 13, in subsection (a), inserted "or proclamations" following "this code or rules"; in subsection (b) inserted "or proclamations" following "this title or rules"; redesignated subsection (d)8. as subsection (d)6., and in subsection (d)6., substituted "released" for "release" preceding "from a trap at the same time and place where caught" and in the paragraph immediately

following subsection (d)6., inserted "dollars" following "seventy-five."

The 1998 amendment, by ch. 251, § 1, in subsection (d)5., inserted "or failing to depart the real property of another after notification" following "Trespassing in violation of warning signs"; in subsection (d)8., substituted "released" for "release" preceding "from a trap at the same time and place where caught" and in the paragraph immediately following subsection (d)8., inserted "dollars" following "seventy-five."

#### **Compiler's Notes.**

The Idaho infraction rules, referred to at the end of subsection (a), are found in volume 2 of the Idaho Court Rules.

### **JUDICIAL DECISIONS**

#### **Hunting.**

Where defendant was apprehended hiking quickly down a road in the woods dressed in camouflage clothing, carrying nearly all the necessary accouterments of a hunter, including an elk call which protruded from his lips and, just a half an hour prior, defendant had freely stated that he was waiting for his co-workers so that he could go hunting, but that, if the co-workers didn't arrive soon, he was going hunting without them, there was

sufficient evidence to conclude that defendant was "hunting" within the statutory meaning of the term. *State v. Thompson*, 130 Idaho 819, 948 P.2d 174 (Ct. App. 1997).

Section 36-202, when read in conjunction with subsection (d) of this section, does not require that a person must actually be in the act of shooting at an animal in order to be considered "hunting". *State v. Thompson*, 130 Idaho 819, 948 P.2d 174 (Ct. App. 1997).

**36-1403. Magistrate to report revocations.** — Records of all revocations of fishing, trapping, and/or hunting privileges shall be submitted to the department by the magistrates concerned.

#### **History.**

I.C., § 36-1403, as added by 1976, ch. 95,

§ 2, p. 315; am. 2003, ch. 200, § 1, p. 528; am. 2005, ch. 20, § 1, p. 57.

**36-1404. Unlawful killing, possession or waste of wild animals, birds and fish — Reimbursable damages — Schedule — Assessment by magistrates — Installment payments — Default judgments — Disposition of moneys.** — (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty of or is convicted of the illegal killing or the illegal possession or illegal waste of game animals or birds or fish shall reimburse the state for each animal so killed or possessed or wasted as follows:

1. Elk, seven hundred fifty dollars (\$750) per animal killed, possessed or wasted.
2. Caribou, bighorn sheep, mountain goat and moose, one thousand five hundred dollars (\$1,500) per animal killed, possessed or wasted.
3. Any other species of big game, four hundred dollars (\$400) per animal killed, possessed or wasted.
4. Wild turkey and swan, two hundred fifty dollars (\$250) per bird killed, possessed or wasted.
5. Sturgeon, chinook salmon, and wild steelhead, two hundred fifty dollars (\$250) per fish killed, possessed or wasted.

6. Bull trout, one hundred fifty dollars (\$150) per fish killed, possessed or wasted.

7. Any other game bird, game fish or furbearer, fifty dollars (\$50.00) per animal killed, possessed or wasted.

Provided further, that any person who pleads guilty, is found guilty of, or is convicted of a flagrant violation, in accordance with section 36-1402(e), Idaho Code, involving the illegal killing, illegal possession or illegal waste of a trophy big game animal as defined in section 36-202(h), Idaho Code, shall reimburse the state for each animal so killed, possessed or wasted, as follows:

1. Trophy mule deer: two thousand dollars (\$2,000) per animal killed, possessed or wasted;

2. Trophy white-tailed deer: two thousand dollars (\$2,000) per animal killed, possessed or wasted;

3. Trophy elk: five thousand dollars (\$5,000) per animal killed, possessed or wasted;

4. Trophy bighorn sheep: ten thousand dollars (\$10,000) per animal killed, possessed or wasted;

5. Trophy moose: ten thousand dollars (\$10,000) per animal killed, possessed or wasted;

6. Trophy mountain goat: ten thousand dollars (\$10,000) per animal killed, possessed or wasted;

7. Trophy pronghorn antelope: two thousand dollars (\$2,000) per animal killed, possessed or wasted;

8. Trophy caribou: ten thousand dollars (\$10,000) per animal killed, possessed or wasted.

For each additional animal of the same category killed, possessed or wasted during any twelve (12) month period, the amount to be reimbursed shall double from the amount for each animal previously illegally killed, possessed or wasted. For example, the reimbursable damages for three (3) elk illegally killed during a twelve (12) month period would be five thousand two hundred fifty dollars (\$5,250), calculated as follows: seven hundred fifty dollars (\$750) for the first elk; one thousand five hundred dollars (\$1,500) for the second elk; and three thousand dollars (\$3,000) for the third elk. In the case of three (3) trophy elk illegally killed in a twelve (12) month period, the reimbursable damages would be thirty-five thousand dollars (\$35,000) calculated as follows: five thousand dollars (\$5,000) for the first elk, ten thousand dollars (\$10,000) for the second elk, and twenty thousand dollars (\$20,000) for the third elk. Provided however, that wildlife possessing a fifty dollar (\$50.00) reimbursement value shall be figured at the same rate per each animal in violation, without compounding.

(b) In every case of a plea of guilty, a finding of guilt or a conviction of unlawfully releasing any fish species into any public body of water in the state, the court before whom the plea of guilty, finding of guilt, or conviction is obtained shall enter judgment ordering the defendant to reimburse the state for the cost of the expenses, not to exceed ten thousand dollars (\$10,000), incurred by the state to correct the damage caused by the unlawful release. For purposes of this subsection, "unlawfully releasing any fish species" shall mean a release of any species of live fish, or live eggs

thereof, in the state without the permission of the director of the department of fish and game; provided, that no permission is required when fish are being freed from a hook and released at the same time and place where caught or when crayfish are being released from a trap at the same time and place where caught.

(c) In every case of a plea of guilty, a finding of guilt or a conviction, the court before whom such plea of guilty, finding of guilt or conviction is obtained shall enter judgment ordering the defendant to reimburse the state in a sum or sums as hereinbefore set forth including postjudgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, bird or fish, such judgment shall be declared against them jointly and severally.

(d) The judgment shall fix the manner and time of payment, and may permit the defendant to pay the judgment in installments at such times and in such amounts as, in the opinion of the court, the defendant is able to pay. In no event shall any defendant be allowed more than two (2) years from the date judgment is entered to pay the judgment.

(e) A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.

(f) All courts ordering such judgments of reimbursement shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game account.

(g) The court shall retain jurisdiction over the case. If at any time the defendant is in arrears ninety (90) days or more, the court may revoke the defendant's hunting, fishing or trapping privileges until the defendant completes payment of the judgment.

#### **History.**

I.C., § 36-1404, as added by 1978, ch. 172, § 1, p. 393; am. 1980, ch. 62, § 1, p. 127; am. 1983, ch. 62, § 1, p. 143; am. 1987, ch. 176, § 2, p. 349; am. 1988, ch. 291, § 1, p. 929; am.

1990, ch. 4, § 2, p. 6; am. 1997, ch. 219, § 2, p. 647; am. 1997, ch. 270, § 3, p. 781; am. 1997, ch. 365, § 2, p. 1076; am. 1998, ch. 175, § 2, p. 615; am. 1999, ch. 66, § 1, p. 175; am. 2000, ch. 257, § 1, p. 726.

#### **STATUTORY NOTES**

##### **Cross References.**

State fish and game account, § 36-107.

##### **Amendments.**

This section was amended by three 1997 acts which appear to be compatible and have been compiled together.

The 1997 amendment, by ch. 219, § 2, in paragraph 6. of subsection (a) inserted "wild steelhead and bull trout," following "Chinook salmon".

The 1997 amendment, by ch. 270, § 3, in paragraph 3. of subsection (a) substituted "any other species of big game" for "Deer, and pronghorn antelope" and added paragraph 7. and the final paragraph of subsection (a).

The 1997 amendment, by ch. 365, § 2, added the present subsection (b) and renumbered former subsections (b) - (f) as subsections (c) - (g), respectively.

#### **JUDICIAL DECISIONS**

##### **Not Unconstitutionally Vague.**

Sections 36-202(h) and 36-1401(c) and subsection (a) of this section are not unconstitu-

tionally vague due to a failure to define the Boone and Crockett measuring standards for determining big game trophy animals, be-

cause a definition of every term in a criminal statute is not required. *State v. Casano*, 140 Idaho 461, 95 P.3d 79 (Ct. App. 2004).

**36-1405. Additional fine imposed.** — In addition to the fines imposed in sections 36-1402 and 36-1404, Idaho Code, there is hereby imposed an additional fine of seven dollars and fifty cents (\$7.50) against each person convicted as provided in those sections, to be deposited directly to the credit of the search and rescue account [fund] created in section 67-2913, Idaho Code.

**History.**

I.C., § 36-1405, as added by 1990, ch. 380, § 1, p. 1054; am. 1996, ch. 57, § 1, p. 168.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertion near the end of the section was added by the compiler to provide the correct name of the referenced fund.

**36-1406. Statute of limitation for misdemeanors.** — (1) Notwithstanding any other provision of law, a prosecution for misdemeanors under the provisions of this title must be commenced by the issuance of a citation or filing of a complaint within two (2) years after its commission for the unlawful sale or purchase of wildlife as set forth in section 36-501, Idaho Code.

(2) Notwithstanding any other provision of law, a prosecution for misdemeanors under the provisions of this title must be commenced by the issuance of a citation or filing of a complaint within five (5) years after its commission: (a) for unlawfully taking or possessing any big game animal, caribou or grizzly bear; or (b) for unlawfully purchasing, possessing or using any license, tag or permit by any person who does not reside in the state of Idaho at the time of purchase.

(3) The prosecution for all other misdemeanors under this title must be commenced as provided in section 19-403, Idaho Code.

**History.**

I.C., § 36-1406, as added by 1993, ch. 307, § 1, p. 1137; am. 2006, ch. 288, § 1, p. 885.

**STATUTORY NOTES**

**Amendments.**

The 2006 amendment, by ch. 288, changed the internal designations in this section, and extended the statute of limitations from two to five years for prosecutorial commencement of actions against the offense of unlawful

taking or possessing of any big game animal, caribou or grizzly bear, as well as the offense of unlawfully purchasing, possessing or using any license, tag or permit by any person who does not reside in the state of Idaho at the time of purchase.

**36-1407. Processing fee imposed on violators.** — (a) In addition to the penalties provided for violating any of the provisions of title 36, Idaho Code, any person who pleads guilty, is found guilty, or is convicted of or received a withheld judgment for the illegal killing or the illegal possession

or illegal waste of game animals shall be assessed a processing fee as follows:

- (1) Moose or elk, two hundred fifty dollars (\$250) per animal killed, possessed or wasted.
- (2) Deer, pronghorn antelope, seventy-five dollars (\$75.00) per animal killed, possessed or wasted.
- (3) Bighorn sheep, caribou and mountain goat, one hundred twenty-five dollars (\$125) per animal killed, possessed or wasted.
- (b) In every case of a plea of guilty, a finding of guilt, a conviction or a withheld judgment, the court before whom such plea of guilty, finding of guilt or conviction is obtained or who enters a withheld judgment shall enter judgment ordering the defendant to pay the state in a sum or sums as hereinbefore set forth including post-judgment interest. If two (2) or more defendants are convicted of the illegal taking, killing or the illegal possession or wasting of the game animal, such judgment shall be declared against them jointly and severally.
- (c) The judgment shall fix the manner and the time of payment. A defaulted judgment or any installment payment thereof may be collected by any means authorized for the enforcement of a judgment under the provisions of the Idaho Code.
- (d) All courts ordering such judgments of processing fees shall order such payments to be made to the department which shall deposit them with the state treasurer, and the treasurer shall place them in the state fish and game set-aside account. These fees shall be available for the processing of the meat of moose, elk, deer, pronghorn antelope, bighorn sheep, caribou and mountain goat which have been illegally taken, accidentally killed, taken as a result of depredation problems or donated by sportsmen. The processed meat thereof shall be distributed by charitable organizations free to needy Idaho residents or utilized by charitable organizations.

#### **History.**

I.C., § 36-1407, as added by 1994, ch. 149,

§ 1, p. 342; am. 2009, ch. 188, § 1, p. 610; am. 2011, ch. 57, § 1, p. 121.

#### **STATUTORY NOTES**

##### **Amendments.**

The 2009 amendment, by ch. 188, in subsection (a)(1), substituted "two hundred fifty dollars (\$250)" for "one hundred seventy-five dollars (\$175)"; in subsection (a)(2), substituted "seventy-five dollars (\$75.00)" for "fifty dollars (\$50.00)"; and in subsection (a)(3),

substituted "one hundred twenty-five dollars (\$125.00)" for "seventy-five dollars (\$75.00)."

The 2011 amendment, by ch. 57, deleted "and black bear" following "mountain goat" in paragraph (a)(3) and in the second sentence in subsection (d).

## **CHAPTER 15**

### **PUBLIC SAFETY**

#### **SECTION.**

36-1501. Revocation of license for improper handling of a weapon.

36-1502. Preferring charges for improper

#### **SECTION.**

handling of a weapon — Hearing — Procedure.

36-1503. Period of revocation.

## SECTION.

- 36-1504. Court revocation.  
 36-1505. Surrender of license.  
 36-1506. List of persons denied right to hunt  
     furnished hunting license ven-  
     dors. [Repealed.]  
 36-1507. Appeal from order of revocation.  
 36-1508. Shooting from public highway —  
     Children in possession of fire-  
     arms.

## SECTION.

- 36-1509. Holes in ice — Size limits — Pen-  
     alty — Exception.  
 36-1510. Interference with hunting, fishing,  
     trapping or wildlife control.  
 36-1511. Revocation of license for taking of  
     animals within boundaries of  
     a national park.

**36-1501. Revocation of license for improper handling of a weapon.** — The director of the Idaho department of fish and game shall revoke the hunting license of any person, and deny them the right to secure any hunting license, in the manner hereinafter provided, for any of the following acts, and for the periods specified. For purposes of this section, the term "weapon" shall mean firearm, gun, crossbow, or bow and arrow. The director, or a referee he may appoint, shall have authority to hold a hearing, subpoena any witness requested by the complainant or by the person accused, administer oaths, and require and receive evidence, oral or in written deposition, in any case where any person who, according to information received, while hunting is alleged:

- (a) To have carelessly handled a weapon that caused accident and injury to person or property;
- (b) To have carelessly handled a weapon that caused injury to livestock of another;
- (c) To have carelessly injured a human being by use of a weapon;
- (d) To have caused accidental injury or death to a person by use of a weapon and fled or failed to render assistance;
- (e) To have caused injury or death to a person by use of a weapon, and not furnished proof to the director or his referee that he has been released from all liability for ambulance, hospital, medical, funeral bills, and other related expense, from the injured person, or his heirs in case of death; provided that a satisfaction of any judgment rendered against the person accused because of any such act shall be deemed a satisfactory release hereunder;
- (f) To have caused damage to livestock by use of a weapon, and not furnished proof to the director or his referee, that he has been released from all liability by the owner of such livestock therefor; provided that a satisfaction of any judgment rendered against the person accused because of any such act shall be deemed a satisfactory release hereunder.

**History.**

I.C., § 36-1501, as added by 1976, ch. 95,  
 § 2, p. 315; am. 1995, ch. 66, § 1, p. 168.

**STATUTORY NOTES****Prior Laws.**

Former title 36, chapter 15, comprised of

§§ 36-1501 to 36-1515, was repealed by S.L. 1976, ch. 95, § 1.

**36-1502. Preferring charges for improper handling of a weapon — Hearing — Procedure.** — Any person may prefer charges, based on any

of the above grounds, against any hunting licensee. Such charges shall be in writing, and shall be sworn to and filed with said director. All charges, unless dismissed by the director as unfounded or trivial, shall be heard by the director or his referee as a contested case under the provisions of chapter 52, title 67, Idaho Code. The hearing shall be held either in the county where the offense is alleged to have occurred or in the county of the defendant's residence. In the event that such licensee resides outside the state of Idaho, such notice shall be served by registered mail with return receipt, mailed to the last known address of such licensee. Any person who shall be subpoenaed before said director or his referee and shall fail to appear before him, without furnishing satisfactory reason for failure to do so, shall be subject to the penalties of contempt upon application to any district court.

**History.**

I.C., § 36-1502, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1995, ch. 66, § 2, p. 168.

**STATUTORY NOTES****Cross References.**

Contempt, § 7-601.

**36-1503. Period of revocation.** — Upon a finding of violation of the acts specified in section 36-1501, Idaho Code, the director is hereby required to revoke the license of the offender and to deny him the right to hunt in Idaho for the following periods:

- (a) For the first offense, for a period to be fixed by the director, with or without the recommendation of his referee, not to exceed five (5) years;
- (b) For each additional offense a period of five (5) years.

**History.**

I.C., § 36-1503, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1995, ch. 66, § 3, p. 168.

**36-1504. Court revocation.** — Any court having jurisdiction in any case coming before it involving any of the offenses contained in this act, shall have authority to revoke a hunter's license, and to deny the right to secure a license to hunt in Idaho, for the several periods herein indicated. Certified notices of such revocation shall be submitted to the director within thirty (30) days following such order by a court.

**History.**

I.C., § 36-1504, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in the first sentence, refer to S.L. 1976, ch. 95, which is compiled as

§ 22-102A and throughout title 36, Idaho Code.

**36-1505. Surrender of license.** — Upon revocation of a hunting

license then in force for any period, the director shall send a written notice to that effect to such person at his last known address either by registered mail, or have it delivered in person by a representative of the department of fish and game, and such licensee shall thereupon surrender his hunting license to the director.

**History.**

I.C., § 36-1505, as added by 1976, ch. 95,  
§ 2, p. 315.

**36-1506. List of persons denied right to hunt furnished hunting license vendors. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** 1506, as added by 1976, ch. 95, § 2, p. 315,  
This section, which comprised I.C., § 36- was repealed by S.L. 2003, ch. 200, § 2.

**36-1507. Appeal from order of revocation.** — Any person dissatisfied by any action of the director made hereunder may appeal to any district court of competent jurisdiction, which shall require a trial de novo of all matters of fact and law. Such appeal shall be perfected by filing with the clerk of such district court, within thirty (30) days after the action of which complaint is made, a petition setting forth the action complained of. Such petition shall constitute the complaint, and summons may be issued thereon directed to the director as defendant, and served upon him. The pleadings thereafter shall conform to the practice in other civil proceedings. The court in its decree may sustain, modify, or reverse the action of the director, and shall render its opinion and judgment on the case appealed.

**History.**

I.C., § 36-1507, as added by 1976, ch. 95,  
§ 2, p. 315.

**36-1508. Shooting from public highway — Children in possession of firearms.** — No person shall:

(a) Shoot from Public Highway. Discharge any firearm from or across a public highway.

(b) Children with Firearms. No person under the age of twelve (12) years shall have in his possession any shotgun, rifle or other firearm while in the fields or forests or in any tent, camp, auto or any other vehicle in the state of Idaho, except that the holder of a youth small game license or youth hunter education graduate license, if accompanied by an adult licensed to hunt in the state of Idaho, may possess a firearm for hunting while in the fields or forests.

**History.**

I.C., § 36-1508, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 34, p. 222; am.

2002, ch. 234, § 9, p. 684.

**STATUTORY NOTES****Cross References.**

Youth hunter education graduate license,  
§ 36-407.

Youth small game license, § 36-404.

**36-1509. Holes in ice — Size limits — Penalty — Exception. —**

(a) No person shall:

- (1) Cut an opening larger than ten (10) inches across the longest part through the ice of any of the streams, lakes or ponds of the state for the purpose of fishing;
- (2) Fish through a man-made opening in ice which is larger than ten (10) inches across the longest part.
- (b) The provisions of this section shall not apply to Bear Lake when an opening in the ice larger than ten (10) inches across the longest part is necessary for dip netting Cisco.

**History.**

I.C., § 36-1509, as added by 1977, ch. 38,  
§ 1, p. 70; am. 1992, ch. 81, § 35, p. 222.

**36-1510. Interference with hunting, fishing, trapping or wildlife control. —**

(1) No person shall:

- (a) Intentionally interfere with the lawful taking or control of wildlife by another; or
- (b) Intentionally harass, bait, drive or disturb any animal for the purpose of disrupting lawful pursuit or taking thereof; or
- (c) Damage or destroy in any way any lawful hunting blind with the intent to interfere with its usage for hunting; or
- (d) Harass, intimidate or threaten by any means including, but not limited to, personal or written contact, or via telephone, e-mail or website, any person who is or was engaged in the lawful taking or control of fish or wildlife.
- (2) Any fish and game enforcement officer or peace officer who reasonably believes that a person has violated provisions of this section may arrest such person therefor.
- (3)(a) The conduct declared unlawful in this section does not include any incidental interference arising from lawful activity by land users or interference by a landowner or members of his immediate family arising from activities on his own property.
- (b) The conduct declared unlawful in this section does not include constitutionally protected activity.
- (4) Every person convicted or entering a plea of guilty or of nolo contendere for violation of this section is subject to a fine of not to exceed one thousand five hundred dollars (\$1,500) or confinement for six (6) months in the county jail, or both such fine and confinement.
- (5) In addition to the penalties provided in subsection (4) of this section, any person who is damaged by any act prohibited in this section may recover treble civil damages. A party seeking civil damages under this subsection (5) may recover upon proof of a violation of the provisions of this section by a preponderance of the evidence. The state of Idaho, or any person may have

relief by injunction against violations of the provisions of this section. Any party recovering judgment under this subsection (5) may be awarded a reasonable attorney's fee.

**History.** § 1, p. 609; am. 1992, ch. 81, § 36, p. 222; am. I.C., § 36-1510, as added by 1987, ch. 288, 2010, ch. 245, § 3, p. 629.

### STATUTORY NOTES

#### Amendments.

The 2010 amendment, by ch. 245, in the section heading, substituted "fishing, trapping or wildlife control" for "fishing and predator control"; in paragraph (1)(a), substituted "taking or control of wildlife by another" for "taking of wildlife or lawful predator control by another"; deleted paragraph (1)(c), which formerly read: "Enter or remain in any area where any animal may be taken with the intent to interfere with the lawful taking or pursuit of wildlife" and made a related redesignation; added paragraph (1)(d); and

added the paragraph (3)(a) designation and paragraph (3)(b).

#### Compiler's Notes.

Section 4 of S.L. 2010, ch. 245 provided "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

#### Effective Dates.

Section 5 of S.L. 2010, ch. 245 declared an emergency. Approved April 8, 2010.

### JUDICIAL DECISIONS

#### Constitutionality.

Former subdivision (1)(c) of this section is unconstitutional but is not an indispensable part of the statute and may be stricken therefrom; the rest of the statute is fully operative in the absence of that portion. *State v. Casey*, 125 Idaho 856, 876 P.2d 138 (1994) (see 2010 amendment).

Former subdivision (1)(c) of this section reaches a substantial amount of constitutionally protected conduct. Its prohibition against someone entering or remaining on property

with the "intent to interfere" includes protected speech in its proscriptions. The subsection does not require physical interference and it is not limited to prohibiting unprotected speech, such as fighting words or obscenity; thus, a substantial amount of protected speech could be affected—and chilled—by the statute, and there is a realistic danger that the statute could significantly compromise recognized First Amendment rights. *State v. Casey*, 125 Idaho 856, 876 P.2d 138 (1994) (see 2010 amendment).

**36-1511. Revocation of license for taking of animals within boundaries of a national park.** — (1) The director of the Idaho department of fish and game may revoke the hunting license of any person, and deny him the right to secure any hunting license, for conviction of any violation of any state or federal fish and game law relating to the taking of animals within the boundaries of a national park.

(2) For the purposes of this section, the term "conviction" shall mean a finding of guilt; an entry of a guilty plea by a defendant and its acceptance by the court; a forfeiture of a bail bond or collateral deposited to secure a defendant's appearance; a suspended sentence; probation; or a withheld judgment.

(3) The director or a referee he may appoint, shall have authority to hold a hearing in the same manner as set forth in sections 36-1501 and 36-1502, Idaho Code. Upon proof of conviction, the director may revoke the hunting license of the offender and deny him the right to hunt in Idaho for a period to be fixed by the director, with or without the recommendation of his referee, not to exceed twenty (20) years.

**History.**

I.C., § 36-1511, as added by 1995, ch. 280,  
§ 1, p. 940.

## CHAPTER 16

### RECREATIONAL TRESPASS — LANDHOLDER LIABILITY LIMITED

**SECTION.**

**36-1601. Public waters — Highways for recreation.**

**36-1602. Hunting on cultivated, posted, or enclosed lands without permission.**

**SECTION.**

**36-1603. Trespassing on cultivated lands or in violation of warning signs — Posting of public lands.**

**36-1604. Limitation of liability of landowner.**

**36-1601. Public waters — Highways for recreation. —**

(a) **Navigable Streams Defined.** Any stream which, in its natural state, during normal high water, will float cut timber having a diameter in excess of six (6) inches or any other commercial or floatable commodity or is capable of being navigated by oar or motor propelled small craft for pleasure or commercial purposes is navigable.

(b) **Recreational Use Authorized.** Navigable rivers, sloughs or streams within the meander lines or, when not meandered, between the flow lines of ordinary high water thereof, and all rivers, sloughs and streams flowing through any public lands of the state shall be open to public use as a public highway for travel and passage, up or downstream, for business or pleasure, and to exercise the incidents of navigation — boating, swimming, fishing, hunting and all recreational purposes.

(c) **Access Limited to Navigable Stream.** Nothing herein contained shall authorize the entering on or crossing over private land at any point other than within the high water lines of navigable streams except that where irrigation dams or other obstructions interfere with the navigability of a stream, members of the public may remove themselves and their boats, floats, canoes or other floating crafts from the stream and walk or portage such crafts around said obstruction re-entering the stream immediately below such obstruction at the nearest point where it is safe to do so.

**History.**

I.C., § 36-1601, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES****Prior Laws.**

Former title 36, chapter 16, comprised of

§§ 36-1601 to 36-1615, was repealed by S.L. 1976, ch. 95, § 1.

**JUDICIAL DECISIONS****Grounds for relief.**

Because environmental groups, challenging timber sales on school endowment trust lands approved by the state board of land commis-

sioners and the Idaho department of lands, did not assert their claim that this section or § 67-4305 provided an independent grounds for relief below, neither argument could be

addressed for the first time on appeal.  
Selkirk-Priest Basin Ass'n v. State ex rel.  
Andrus, 127 Idaho 239, 899 P.2d 949 (1995).

## DECISIONS UNDER PRIOR LAW

## ANALYSIS

Definition of navigability.  
Estuaries.

**Definition of Navigability.**

Although the definition under the former statute referred only to navigability of streams for purposes of fishing, it was similar to the common-law definition of navigability for other purposes and had been applied to determine navigability both for purposes of fishing and for other purposes such as recreation or commerce. Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977).

inch log could be floated on an estuary, that the estuary had, for four decades, been used for fishing, boating, hunting, picnicking and sightseeing and that the building of a downstream dam had not substantially affected the water level in the estuary, the estuary was a navigable stream within the meaning of the former statute. Ritter v. Standal, 98 Idaho 446, 566 P.2d 769 (1977).

**Estuaries.**

Where the evidence indicated that a six-

**36-1602. Hunting on cultivated, posted, or enclosed lands without permission.** — No person shall hunt with a dog or weapon upon lands of another that are cultivated, posted, or enclosed by fences of any description sufficient to show the boundaries of the land enclosed without first obtaining permission from the owner or occupant thereof or his agent. Any person so hunting shall be responsible to the owner of said lands for all damages. Any person or persons violating the provisions of this section resulting in injuring or killing any livestock on said lands shall be found guilty in accordance with section 36-1401, Idaho Code.

**History.**

I.C., § 36-1602, as added by 1976, ch. 95, § 2, p. 315; am. 1987, ch. 116, § 1, p. 229; am.

1992, ch. 81, § 37, p. 222.

## STATUTORY NOTES

**Cross References.**

Criminal trespass, § 18-7008.

Penalty for misdemeanor under fish and game laws, § 36-1402.

**36-1603. Trespassing on cultivated lands or in violation of warning signs — Posting of public lands.** — (a) No person shall enter the real property of another and shoot any weapon or enter such property for the purposes of hunting, retrieving wildlife, fishing or trapping, without the permission of the owner or person in charge of the property, which property is either cultivated or posted with legible "No Trespassing" signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or other notices of like meaning, placed in a conspicuous manner on or near all boundaries at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet provided that where the geographical configuration of the real property is such that entry can reasonably be made only at certain points of access, such property is posted sufficiently for all purposes of this subsection if said signs, paint

areas or notices are posted at such points of access. For the purposes of this section, "cultivated" shall mean soil that is being or has been prepared by loosening or breaking up for the raising of crops, or used for the raising of crops, or artificially irrigated pasturage. No person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner of the real property or the owner's authorized agent.

(b) No person shall post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.

**History.**

I.C., § 36-1603, as added by 1976, ch. 95, § 2, p. 315; am. 1987, ch. 116, § 2, p. 229; am. 1992, ch. 283, § 2, p. 874; am. 1998, ch. 251, § 2, p. 818; am. 2005, ch. 112, § 1, p. 363.

**STATUTORY NOTES****Cross References.**

Lawful fences, § 35-101 et seq.

**JUDICIAL DECISIONS**

**Cited in:** State v. Kelly, 106 Idaho 268, 678 P.2d 60 (Ct. App. 1984).

**36-1604. Limitation of liability of landowner.** — (a) Statement of Purpose. The purpose of this section is to encourage owners of land to make land, airstrips and water areas available to the public without charge for recreational purposes by limiting their liability toward persons entering thereon for such purposes.

(b) Definitions. As used in this section:

1. "Airstrips" means either improved or unimproved landing areas used by pilots to land, park, take off, unload, load and taxi aircraft. Airstrips shall not include landing areas which are or may become eligible to receive federal funding pursuant to the federal airport and airway improvement act of 1982 and subsequent amendments thereto.

2. "Land" means private or public land, roads, airstrips, trails, water, watercourses, irrigation dams, water control structures, headgates, private or public ways and buildings, structures, and machinery or equipment when attached to or used on the realty.

3. "Owner" means the possessor of a fee interest, a tenant, lessee, occupant or person in control of the premises.

4. "Recreational purposes" includes, but is not limited to, any of the following activities or any combination thereof: hunting, fishing, swimming, boating, rafting, tubing, camping, picnicking, hiking, pleasure driving, the flying of aircraft, bicycling, running, playing on playground equipment, skateboarding, athletic competition, nature study, water skiing, animal riding, motorcycling, snowmobiling, recreational vehicles, winter sports, and viewing or enjoying historical, archeological, scenic, geological or scientific sites, when done without charge of the owner.

(c) Owner Exempt from Warning. An owner of land owes no duty of care to keep the premises safe for entry by others for recreational purposes, or to

give any warning of a dangerous condition, use, structure, or activity on such premises to persons entering for such purposes. Neither the installation of a sign or other form of warning of a dangerous condition, use, structure, or activity, nor any modification made for the purpose of improving the safety of others, nor the failure to maintain or keep in place any sign, other form of warning, or modification made to improve safety, shall create liability on the part of an owner of land where there is no other basis for such liability.

(d) **Owner Assumes No Liability.** An owner of land or equipment who either directly or indirectly invites or permits without charge any person to use such property for recreational purposes does not thereby:

1. Extend any assurance that the premises are safe for any purpose.
2. Confer upon such person the legal status of an invitee or licensee to whom a duty of care is owed.
3. Assume responsibility for or incur liability for any injury to person or property caused by an act of omission of such persons.

(e) **Provisions Apply to Leased Public Land.** Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land leased to the state or any subdivision thereof for recreational purposes.

(f) **Provisions Apply to Land Subject to a Conservation Easement.** Unless otherwise agreed in writing, the provisions of this section shall be deemed applicable to the duties and liability of an owner of land subject to a conservation easement to any governmental entity or nonprofit organization.

(g) **Owner Not Required to Keep Land Safe.** Nothing in this section shall be construed to:

1. Create a duty of care or ground of liability for injury to persons or property.
2. Relieve any person using the land of another for recreational purposes from any obligation which he may have in the absence of this section to exercise care in his use of such land and in his activities thereon, or from legal consequences or failure to employ such care.
3. Apply to any person or persons who for compensation permit the land to be used for recreational purposes.

(h) **User Liable for Damages.** Any person using the land of another for recreational purposes, with or without permission, shall be liable for any damage to property, livestock or crops which he may cause while on said property.

#### **History.**

I.C., § 36-1604, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 161, § 1, p. 349; am. 1988, ch. 230, § 1, p. 443; am. 1988, ch. 336, § 1, p. 1002; am. 1999, ch. 72, § 1, p. 194; am. 2002, ch. 346, § 1, p. 981; am. 2003, ch. 265, § 1, p. 701; am. 2006, ch. 279, § 1, p. 861.

#### **STATUTORY NOTES**

#### **Amendments.**

This section was amended by two 1988 acts which appear to be compatible and have been compiled together.

The 1988 amendment, by ch. 230, in subsection (b)1 added "irrigation dams, water control structures, headgates," following "watercourses" and in subsection (b)3 added "raft-

ing, tubing" following "nature".

The 1988 amendment, by ch. 336, in subsection (c) added the second sentence.

The 2006 amendment, by ch. 279, in subsection (a), inserted "airstrips"; added subsection (b)(1), and made related redesignations; in subsection (b)(2), inserted "airstrips"; and in subsection (4), inserted "activities" and "the flying of aircraft."

#### Federal References.

The federal airport and airway improve-

ment act of 1982, generally codified as 49 USCS § 2101 et seq., was repealed by Act of July 5, 1994, P.L. 103-272. For present comparable provisions, see 49 USCS § 47101 et seq.

#### Effective Dates.

Section 2 of S.L. 1988, ch. 336 declared an emergency. Approved April 6, 1988.

Section 2 of S.L. 2002, ch. 346 declared an emergency. Approved March 27, 2002.

## JUDICIAL DECISIONS

### ANALYSIS

**City parks.**

Doctrine of attractive nuisance.

**Immunity.**

—**City.**

—**Gratuitous permission.**

Implied invitation.

Motorcyclists.

Purpose.

Rational basis.

Recreational purposes.

—**Motorcycling.**

—**Playing.**

School district.

School property.

Specific intent.

State parks.

Trespasser.

User's protection.

Wilful or wanton conduct.

#### **City Parks.**

This section applies to public entities; therefore, the city was immune from liability for personal injury to a child who fell from a swing in a city park. McGhee ex rel. McGhee v. City of Glens Ferry, 111 Idaho 921, 729 P.2d 396 (1986).

This recreational statute applies to public parks, and, although this section's applicability to the city park was not addressed in the lease between the city and the electric company who owned the park, the lease provided that the city would maintain the park and its equipment and, as such, memorialized the shift in "control of the premises" and the shift in responsibility, as well as immunity, from the company to the city. Nelson ex rel. Nelson v. City of Rupert, 128 Idaho 199, 911 P.2d 1111 (1996).

#### **Doctrine of Attractive Nuisance.**

This section does not preclude the liability of a landowner under the doctrine of attractive nuisance, whether or not the claimant was a trespasser. Jacobsen v. City of Rathdrum, 115 Idaho 266, 766 P.2d 736 (1988).

#### **Immunity.**

—**City.**

Private pilots and aircraft owners—both recreational and business users—have a "special relationship" with the city which precluded city from claiming immunity under this section for damage to private pilot's airplane even though airplane was used only for recreational purposes. Tomich v. City of Pocatello, 127 Idaho 394, 901 P.2d 501 (1995).

#### —**Gratuitous Permission.**

The statute does not confer absolute immunity upon owners who gratuitously permit recreational use of their property. Ambrose ex rel. Ambrose v. Buhl Joint Sch. Dist. No. 412, 126 Idaho 581, 887 P.2d 1088 (Ct. App. 1995).

#### **Implied Invitation.**

Since no inference of implied invitation could arise in the face of the uncontested evidence of the tubular steel barricade placed across the road and the numerous and clearly visible "no trespassing" signs, motorcyclist who was killed in accident was not on private property by reason of implied invitation. Rice v. Miniver, 112 Idaho 1069, 739 P.2d 368 (1987).

The statute was intended to insulate landowners only from liability predicated on a duty of care owed to an invitee or licensee. *Ambrose ex rel. Ambrose v. Buhl Joint Sch. Dist. No. 412, 126 Idaho 581, 887 P.2d 1088 (Ct. App. 1995)*.

#### **Motorcyclists.**

This section did not bar the action by the motorcyclist who was injured on a road maintained by the bureau of Indian affairs even though he was going for a pleasure ride at the time of the accident. *Seyler v. United States, 832 F.2d 120 (9th Cir. 1987)*.

#### **Purpose.**

This section was intended to insulate landowners only from liability predicated on a duty of care owed to an invitee or licensee and it was the intention of the legislature that for liability purposes those who use property for recreational purposes under the statute will be treated the same as if they had been trespassers. *Jacobsen v. City of Rathdrum, 115 Idaho 266, 766 P.2d 736 (1988)*.

The purpose of this section is to encourage owners of land to make land and water areas available to the public without charge for recreational purposes. The statute accomplishes this purpose by generally limiting the duty of care owed by the landowner to recreational users. Public entities are landowners under terms of the statute. *Ambrose ex rel. Ambrose v. Buhl Joint Sch. Dist. No. 412, 126 Idaho 581, 887 P.2d 1088 (Ct. App. 1995)*.

#### **Rational Basis.**

This section advances legitimate legislative goals in a rational fashion and is, therefore, constitutional. *Johnson v. Sunshine Mining Co., 106 Idaho 866, 684 P.2d 268 (1984)*.

The stated legislative determination that the limitation of liability in this section will "encourage owners of land to make land and water areas available to the public without charge for recreational purposes" is a rational legislative judgment; accordingly, this statute survives the rational basis equal protection test. *Johnson v. Sunshine Mining Co., 106 Idaho 866, 684 P.2d 268 (1984)*.

#### **Recreational Purposes.**

Where the plaintiff and his friends had been to the monument on the landowner's property and had driven back to the vicinity of the sandpit's edge in order to allow the plaintiff to relieve himself, when the plaintiff fell into the sandpit and injured himself, there was a question of fact as to whether plaintiff's activity fell within the ambit of the recreational land use statute; thus, summary judgment was inappropriate. *Cooper v. Unimin Corp., 639 F. Supp. 1208 (D. Idaho 1986)*.

#### **—Motorcycling.**

Motorcycling for pleasure is sufficiently similar to the activities listed in subdivision

(b)(3) of this section to be included within the meaning of the statute. *Johnson v. Sunshine Mining Co., 106 Idaho 866, 684 P.2d 268 (1984)* (decision under terms of section prior to 1980 amendment).

#### **—Playing.**

Although playing is not one of the "recreational purposes" listed in subdivision (b)(3) of this section, the list of activities there does not limit the term. Playing is within the recreational purposes contemplated by this section. *Jacobsen v. City of Rathdrum, 115 Idaho 266, 766 P.2d 736 (1988)*.

#### **School District.**

The school district, as owner of the land upon which it allowed Pee Wee baseball games to be played during the summer months, enjoys the protections afforded by this section. *Ambrose ex rel. Ambrose v. Buhl Joint Sch. Dist. No. 412, 126 Idaho 581, 887 P.2d 1088 (Ct. App. 1995)*.

#### **School Property.**

It would be entirely artificial to apply this section to activities of students up to the moment the first bell rings and classes begin. No purpose would be served by drawing this line for application of this section. When the principal is present, some faculty members are on duty and students have arrived, the school day has begun and this section has no application to a student who is injured on the school grounds. *Bauer ex rel. Bauer v. Minidoka School Dist. 331, 116 Idaho 586, 778 P.2d 336 (1989)*.

This section did not apply to a case where a student was injured playing football on school property before the start of the school day. *Bauer ex rel. Bauer v. Minidoka School Dist. 331, 116 Idaho 586, 778 P.2d 336 (1989)*.

#### **Specific Intent.**

Nothing in this section required that the recreational user formulate a specific intent to use the property for recreational purposes and, if the person actually uses the property for recreational purposes, no showing of a specific intent to do so is required. *Jacobsen v. City of Rathdrum, 115 Idaho 266, 766 P.2d 736 (1988)*.

#### **State Parks.**

The trial court properly granted summary judgment for the state on the basis of the state's immunity from liability under this section, where the plaintiff was operating a snowmobile in a state park open for recreational use and was injured when the snowmobile struck a cable which was strung across a path in the park. *Corey v. State, 108 Idaho 921, 703 P.2d 685 (1985)*.

Statute did not protect park from liability where the plaintiff paid to enter the park and was injured while fishing in the park; therefore, trial court erred in dismissing plaintiff's

suit against park. *Allen v. State*, 136 Idaho 487, 36 P.3d 1275 (2001).

#### **Trespasser.**

A landowner owes a duty of care to a trespasser and, thus, a person using the land for recreational purposes, in two circumstances. First, it is a landowner's duty to a trespasser to refrain from wilful or wanton acts which might cause injuries. Second, the landowner may be liable for injuries to a trespassing child under the attractive nuisance doctrine. *Ambrose ex rel. Ambrose v. Buhl Joint Sch. Dist. No. 412*, 126 Idaho 581, 887 P.2d 1088 (Ct. App. 1995).

#### **User's Protection.**

There is no indication in this section that the legislature intended to abolish a landown-

er's liability to trespassers. Those who use an owner's land for recreational purposes are entitled to at least the same protection as trespassers are afforded. *Jacobsen v. City of Rathdrum*, 115 Idaho 266, 766 P.2d 736 (1988).

#### **Wilful or Wanton Conduct.**

This section does not preclude liability of an owner for wilful or wanton conduct that causes the injury of a person using the owner's land for recreational purposes. *Jacobsen v. City of Rathdrum*, 115 Idaho 266, 766 P.2d 736 (1988).

**Cited in:** *State ex rel. Haman v. Fox*, 100 Idaho 140, 594 P.2d 1093 (1979).

## **RESEARCH REFERENCES**

**A.L.R.** — Limitation of liability, effect of statute limiting landowner's liability for per-

sonal injury to recreational user, 47 A.L.R.4th 262.

## **CHAPTER 17**

## **COUNTY FISH HATCHERIES**

### **SECTION.**

**36-1701. Declaration of public benefit.**

**36-1702. Operation of county fish hatcheries**  
— Special tax levy.

**36-1701. Declaration of public benefit.** — The legislature of the state of Idaho declares that it would be for the public good to authorize and empower the boards of commissioners of the respective counties of the state to raise [moneys] through taxation to be expended in the artificial propagation of game fish and in the distribution and planting of such fish within their respective counties and within the limitations and restrictions prescribed in and by section 36-1702, Idaho Code.

#### **History.**

I.C., § 36-1701, as added by 1976, ch. 95, § 2, p. 315.

## **STATUTORY NOTES**

#### **Cross References.**

Fish hatcheries, maintenance by state fish and game director, § 36-106.

State fish and game commission may acquire, develop, operate and maintain fish hatcheries and nursery ponds, § 36-104.

#### **Compiler's Notes.**

The bracketed word "moneys" was inserted by the compiler as the probable missing term.

**36-1702. Operation of county fish hatcheries — Special tax levy.**  
— In addition to any and all other powers conferred upon them in this

chapter, the board of county commissioners in any county of the state shall have jurisdiction and power to be exercised at its option:

(a) Construction and Operation by Counties. To construct, maintain, operate, and improve such fish hatcheries, rearing ponds and such other facilities as it may deem necessary for the propagation and distribution of game fish within its own county.

(b) Authorized Expenditures. To expend moneys to be raised by taxation, as hereinafter provided, for the purpose of propagation and distribution of game fish within its own county provided that no moneys shall be so expended by any such board of county commissioners except in the direct payment of expenses and accounts which shall have been contracted or incurred by or under the immediate direction and with the approval of such board of county commissioners. Provided further that no moneys shall be expended under the provisions of this section upon or for the benefit of any such hatchery unless the entire output thereof shall be used in stocking waters within the county in which such hatchery is situated.

(c) Special Tax Levy. To levy annually for such purposes at the same time other taxes are levied a special tax of not to exceed five thousandths percent (.005%) of the market value for assessment purposes on all taxable property in the county provided that all moneys to be derived from such tax shall be deposited and kept by the county treasurer in a special fund to be designated as "fish hatchery fund" and no portion of such moneys shall be withdrawn from such fund except upon warrants drawn at the direction of the board of county commissioners and no portion of such moneys shall be expended or used except for said purposes and subject to the restrictions specified in this section.

#### **History.**

I.C., § 36-1702, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1995, ch. 82, § 14, p. 218.

## **CHAPTER 18**

### **FEDERAL AID FOR FISH AND WILDLIFE RESTORATION PROJECTS**

#### **SECTION.**

- 36-1801. Assent to Pittman-Robertson federal aid act — Establishment of wildlife restoration projects.
- 36-1802. Assenting to provisions of Dingell-Johnson act of Congress.
- 36-1803. Wildlife restoration project fund and fish restoration and management fund.

#### **SECTION.**

- 36-1804. Manner of use and purposes of funds.
- 36-1805. Revolving fund.
- 36-1806. Federal migratory bird reservations — Acquisition consented to.
- 36-1807. Public hearings — Information — Approval or disapproval — Purchases of five acres or less.

**36-1801. Assent to Pittman-Robertson federal aid act — Establishment of wildlife restoration projects.** — The state of Idaho hereby assents to the provisions of the act of Congress entitled, "An Act to Provide that the United States shall aid the States in Wildlife Restoration Projects." Approved September 2, 1937 (Public Law 415, 75th Congress), as amended July 24, 1946, 60 Stat. 656, and as amended October 23, 1970 (Public Law

503, 91st Congress), and the commission is hereby authorized, empowered and directed to perform such acts as may be necessary to the conduct and establishment of cooperative wildlife-restoration projects, in compliance with said act, and with rules and regulations promulgated by the secretary of agriculture thereunder and no funds accruing to the state of Idaho from license fees paid by hunters shall be diverted for any other purpose than the administration of the department of fish and game and for the protection, propagation, preservation and investigation of wildlife.

#### **History.**

I.C., § 36-1801, as added by 1976, ch. 95,  
§ 2, p. 315.

#### **STATUTORY NOTES**

##### **Cross References.**

Notice by mail, § 60-109A.

amended, (Pittman-Robertson wildlife restoration act) is compiled as 16 USCS §§ 669 to 669b and 669c to 669i.

##### **Prior Laws.**

Former title 36, chapter 18, comprised of §§ 36-1801 to 36-1803, was repealed by S.L. 1976, ch. 95, § 1.

##### **Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

##### **Federal References.**

Public Law 415, 75th Congress, as

#### **OPINIONS OF ATTORNEY GENERAL**

Interest earnings upon license revenues in the fish and game account are required to be

credited to the fish and game account. OAG 90-1.

**36-1802. Assenting to provisions of Dingell-Johnson act of Congress.** — The state of Idaho hereby assents to the provisions of the act of Congress entitled, "An Act to Provide that the United States shall aid the States in Fish Restoration and Management Projects, and for other Purposes," approved August 9, 1950, being Public Law 681 of the 81st Congress of the United States, and the commission is hereby authorized, empowered, and directed to perform such acts as may be necessary to the conduct and establishment of cooperative fish restoration projects, as defined in said act of Congress, in compliance with said act and rules and regulations promulgated by the secretary of the interior thereunder and no funds accruing to the state of Idaho from license fees paid by fishermen shall be diverted for any other purpose than the administration of the department for the protection, propagation, preservation and investigation of wildlife.

#### **History.**

I.C., § 36-1802, as added by 1976, ch. 95,  
§ 2, p. 315.

#### **STATUTORY NOTES**

##### **Cross References.**

Notice by mail, § 60-109A.

Johnson sport fish restoration act) is compiled as 16 USCS §§ 777 to 777e, 777f, 777g, 777h, 777i, and 777k to 777n.

##### **Federal References.**

Public Law 681, 81st Congress (Dingell-

**OPINIONS OF ATTORNEY GENERAL**

Interest earnings upon license revenues in the fish and game account are required to be credited to the fish and game account. OAG 90-1.

**36-1803. Wildlife restoration project fund and fish restoration and management fund.** — The commission shall budget from any of the monies of the fish and game fund [account] an amount requisite and necessary to meet and match cooperative grants of the federal government, which amounts so set aside shall be placed in two (2) separate funds to be known as the wildlife restoration project section and the fish restoration and management project section of the department of fish and game and which said monies so set aside and placed in said project sections shall be used and expended by the commission, or under its direction and control, in cooperative activities in wildlife restoration projects and fish restoration and management projects under the provisions of sections 36-1801 and 36-1802, Idaho Code. Provided that the dates on which said amounts, or any part thereof, are budgeted from the fish and game fund [account] and transferred to said project sections shall be left to the discretion of the commission, except that such amounts shall be budgeted each year.

**History.**

I.C., § 36-1803, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES****Cross References.**

State fish and game account, § 36-107.

**Compiler's Notes.**

The bracketed insertions, near the begin-

ning and end of the section, were added by the compiler to supply the correct name of the referenced account.

**36-1804. Manner of use and purposes of funds.** — The amount of money so set aside and transferred shall be used by the commission in the selection, restoration, rehabilitation, and improvement of areas of land or water adaptable as feeding, resting, or breeding places for wildlife and fish, and the construction thereon or therein of such works as may be necessary to make them available and adequate for such purposes and, also, including such research into problems of wildlife management and fish restoration and management projects as may be necessary to efficient administration affecting wildlife and fish resources, and such preliminary or incidental costs and expenses as may be incurred in and about such wildlife projects and such fish restoration and management projects and in cooperation with the provisions of the Wildlife Restoration Projects Act and the Fish Restoration and Management Projects Act. Wildlife restoration projects monies may also be used in the establishment and maintenance of a hunter safety training program and the acquisition, construction, operation and maintenance of public outdoor target ranges as a part of such program.

**History.**

I.C., § 36-1804, as added by 1976, ch. 95,  
§ 2, p. 315.

## STATUTORY NOTES

**Federal References.**

The reference to the Wildlife Restoration Projects Act, near the end of the first sentence, is to the Pittman-Robertson wildlife restoration act, also known as the federal aid in wildlife restoration act, codified as 16 USCS §§ 669 to 669b and 669c to 669i.

The reference to the Fish Restoration and Management Projects Act, near the end of the first sentence, is to the Dingell-Johnson sport fish restoration act, also known as the fish restoration and management projects act, codified as 16 USCS §§ 777 to 777e, 777g, 777h, 777i, and 777k to 777n.

**36-1805. Revolving fund.** — The monies set aside by the fish and game commission of the state of Idaho from the fish and game fund [account] and any monies coming into the said fish and game fund [account] as grants-in-aid under the provisions of the Wildlife Restoration Projects Act shall be transferred to the wildlife restoration projects fund which shall be used as a revolving fund for the purposes hereinbefore set forth and not otherwise in wildlife restoration projects.

**History.**

I.C., § 36-1805, as added by 1976, ch. 95, § 2, p. 315.

## STATUTORY NOTES

**Cross References.**

State fish and game account, § 36-107.  
Wildlife restoration projects fund, § 36-1803.

life restoration act, also known as the federal aid in wildlife restoration act, codified as 16 USCS §§ 669 to 669b and 669c to 669i.

**Federal References.**

The reference to the Wildlife Restoration Projects Act is to the Pittman-Robertson wild-

**Compiler's Notes.**

The bracketed insertions were added by the compiler to supply the correct name of the referenced account.

**36-1806. Federal migratory bird reservations — Acquisition consented to.** — Only the legislature by adoption of a concurrent resolution may grant the consent of the state of Idaho to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the state of Idaho, as the United States may deem necessary for the establishment of migratory bird reservations in accordance with the act of congress approved February 18, 1929, entitled "An Act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and water to furnish in perpetuity reservations for the adequate protection of such birds and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes." The state of Idaho reserves full and complete jurisdiction and authority over all such areas for which consent is granted not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress.

**History.**

I.C., § 36-1806, as added by 1976, ch. 95, § 2, p. 315; am. 1997, ch. 386, § 1, p. 1241.

## STATUTORY NOTES

**Cross References.**

Migratory birds, bag limits, federal regulations, § 36-1102.

section, is Act Feb. 18, 1929, ch. 257, the migratory bird conservation act, generally codified as 16 USCS § 715 et seq.

**Federal References.**

The act of congress, referred to in this

**36-1807. Public hearings — Information — Approval or disapproval — Purchases of five acres or less.** — Whenever the creation, establishment or enlargement of any heretofore established or hereafter to be established cooperative wildlife restoration project or migratory bird reservation, as provided in sections 36-1801 and 36-1806, Idaho Code, shall contemplate, require or involve the acquisition of privately owned property by either the state of Idaho or the United States, neither the state of Idaho, the Idaho fish and game commission, nor any other officer, person or agency of the state of Idaho authorized to act for the state of Idaho shall consent to, approve of, concur in, assent to or authorize establishment of or enlargement of any cooperative wildlife restoration project or migratory bird reservation unless a public hearing has been held in the county or counties where the proposed cooperative wildlife restoration project or migratory bird reservation is to be established or enlarged or the proposed lands are to be acquired and until fifteen (15) days shall have elapsed following such hearing.

Notice of such public hearing shall be given by certified mail to the board of county commissioners of the county or counties affected and by publication in a newspaper or newspapers having general circulation within such county or counties. Such publication shall be given so that the first such publication shall be at least ten (10) and not more than fifteen (15) days before the date of hearing and if published weekly, shall be published in at least two (2) successive issues and if published daily, shall be published in at least seven (7) successive issues. The notices shall contain a brief description of the proposed project and a general description of the proposed location thereof and the place and time of hearing and state that all interested persons may appear and be heard.

At the hearing, the commission shall present or cause to be presented oral and documentary evidence as to the land areas affected, the existing use of and production from said lands, the probable changes in use and production of said lands if included in such project, the existing tax to all taxing districts payable from such lands and the estimated amount of any payments in lieu of taxes, if any, and to what taxing district such in-lieu payments will be made if the lands be included in such project. The board of county commissioners of the county or counties affected and other persons present may present oral or documentary evidence upon any of the above matters and upon any other matters showing the economic effect the proposal would have upon the county or counties and their residents. Statements will be received, either oral or written, from any county resident present who shall wish to make his views known either in favor of or in opposition to such proposed project. From and after such hearing the board of county commissioners of the county or counties affected shall have fifteen

(15) days to recommend and file approval or disapproval of such proposed project. Failure of the board to act within said period shall be deemed approval by them of the proposed project. If the board of any county affected shall recommend disapproval of such project, then the state of Idaho or any agency, commission or officer thereof shall not consent, concur, approve or assent to such project without first giving serious consideration to the objections of the board of county commissioners and filing with the board of county commissioners a written statement reasonably explaining the reasons for giving the consent, concurrence, approval or assent in the face of such objections. In the event (of) no such consent, concurrence, approval or assent is given, nothing herein contained shall be construed to prevent reconsideration of such proposals, or modification thereof, from time to time upon the same procedures for notice and hearing as set forth hereinabove.

No assent, approval, consent, or recommendation, as required by sections 36-1801 or 36-1806, Idaho Code, shall be of any force or effect until the requirements for notice and hearing as set forth herein have been satisfied. Nothing in this chapter shall be applicable to land purchases of five (5) acres or less.

#### **History.**

I.C., § 36-1807, as added by 1976, ch. 95,  
§ 2, p. 315.

#### **STATUTORY NOTES**

#### **Compiler's Notes.**

The word "of" in the last sentence of the third paragraph of this section was enclosed

in parentheses by the compiler to denote surplusage.

## **CHAPTER 19**

### **WILDLIFE PRESERVES**

#### **SECTION.**

- 36-1901. Purpose of preserves.
- 36-1902. Wild animals and wild birds protected.
- 36-1903. Depredation control.
- 36-1904. Possession as *prima facie* evidence of violation — Exception. [Repealed.]
- 36-1905. Myrtle Creek preserve.
- 36-1906. David Thompson preserve.
- 36-1907. Lewiston Orchards preserve. [Repealed.]

#### **SECTION.**

- 36-1908. Lewiston preserve.
- 36-1909, 36-1910. [Repealed.]
- 36-1911. Springfield bird preserve.
- 36-1912. Minidoka Forest state bird preserve. [Repealed.]
- 36-1913. Pocatello Forest preserve. [Repealed.]
- 36-1914. General penal provisions applicable to various preserves. [Repealed.]

**36-1901. Purpose of preserves.** — The wildlife preserves herein described are created for the better protection of wild animals and birds, for the establishment of breeding places therefor and for the preservation of the species thereof.

#### **History.**

I.C., § 36-1901, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES**

**Cross References.** §§ 36-1901 to 36-1902, was repealed by S.L. 1976, ch. 95, § 1.  
Federal migratory bird reservations, § 36-1806.

**Prior Laws.**

Former title 36, chapter 19, comprised of

**36-1902. Wild animals and wild birds protected.** — No person shall take any wild animals or wild birds in any of the wildlife preserves within the state of Idaho which have been created by law except as hereinafter provided or by commission regulation promulgated pursuant to the provisions of section 36-104(b)4, Idaho Code.

**History.**

I.C., § 36-1902, as added by 1976, ch. 95, § 2, p. 315; am. 1992, ch. 81, § 38, p. 222.

**36-1903. Depredation control.** — (a) Conservation Officers to Authorize Taking of Predatory Animals. Predatory animals may be taken within a wildlife preserve by conservation officers or persons authorized by conservation officers when such animals are causing damage.

(b) Control of Other Wildlife Causing Damage. Other wildlife causing damage to any private property within said preserve shall be controlled in accordance with the provisions of section 36-1107, Idaho Code.

**History.**

I.C., § 36-1903, as added by 1976, ch. 95, § 2, p. 315.

**36-1904. Possession as prima facie evidence of violation — Exception. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** 1904, as added by 1976, ch. 95, § 2, p. 315,  
This section, which comprised I.C., § 36- was repealed by S.L. 1979, ch. 78, § 3.

**36-1905. Myrtle Creek preserve.** — There is hereby created within the boundaries of Boundary County, within the state of Idaho, a wildlife preserve to be known as Myrtle Creek preserve, the boundaries of which are as follows: beginning at the southwest corner of section 23, township 62 north, range 1 west of the Boise meridian; thence north along the west line of section 23 to the summit of the ridge between Myrtle Creek and Cascade Creek, thence northwesterly along this ridge to Burton Peak, then westerly along the summit of the ridge between Myrtle Creek and Ball Creek to Myrtle Peak, then southerly around the head of Myrtle Creek following the summit of the ridge between Myrtle Creek and Two Mouth Creek, to Harrison Peak, then following the summit of the ridge between Myrtle Creek and Snow Creek in an easterly direction to a point approximately 1 mile east of Kootenai Point where this ridge intersects the east line of section 28, township 62 north, range 1 west of the Boise meridian; thence in a northeasterly direction to the point of beginning.

Fishing restricted. In addition to the provisions of section 36-1902, Idaho Code, it shall be unlawful for any person at any time to fish within the boundaries of the aforesaid Myrtle Creek preserve. Provided that the Idaho fish and game commission may, after receiving concurrent written approval from the Idaho department of environmental quality and the Bonners Ferry city council, open certain waters and lands lying within the Myrtle Creek preserve to hunting, fishing or trapping during prescribed seasons. Provided further that any fish eradication treatment of waters in the Myrtle Creek preserve by the Idaho department of fish and game shall be undertaken only with the concurrent written permission of the Idaho department of environmental quality and the Bonners Ferry city council and under the direct supervision of the Idaho department of environmental quality.

**History.**

I.C., § 36-1905, as added by 1976, ch. 95, § 2, p. 315; am. 2001, ch. 103, § 11, p. 253.

**STATUTORY NOTES****Cross References.**

Department of environmental quality,  
§ 39-104.

**36-1906. David Thompson preserve.** — There is hereby created within the boundaries of Bonner County in the state of Idaho a wildlife preserve to be known as the David Thompson wildlife preserve, the boundaries of which are described as follows: commencing where the east and west 1/2 section line of section 1, township 56 north, range 1 east, Boise meridian, leaves Lake Pend d'Oreille at elevation 2,061 feet above sea level; thence east on said line until it crosses the east and west state highway; thence along said highway until said highway crosses the north and south 1/2 section line on section 7, township 56 north, range 2 east, Boise meridian; thence south on said 1/2 section line through sections 7, 18 and 19 to where the line intersects the Clark Fork river; thence following the shoreline of said river to the shoreline of Lake Pend d'Oreille, thence at an elevation of 2,061 feet above sea level, along the shoreline of Lake Pend d'Oreille to the place of beginning.

**History.**

I.C., § 36-1906, as added by 1976, ch. 95, § 2, p. 315.

**36-1907. Lewiston Orchards preserve. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-

1907, as added by 1976, ch. 95, § 2, p. 315, was repealed by S.L. 1983, ch. 47, § 1.

**36-1908. Lewiston preserve.** — There is hereby created within the boundaries of Nez Perce County, within the state of Idaho, a preserve to be

known as Lewiston preserve, the boundaries of which are described as follows: all that territory on both sides of the Clearwater River between Spalding and the Eighteenth Street Bridge across the Clearwater River, in the city of Lewiston, Idaho, and the north and south highway on the north side of the said Clearwater River, and Camas Prairie railroad on the south side of said Clearwater River.

**History.**

I.C., § 36-1908, as added by 1976, ch. 95,  
§ 2, p. 315.

**36-1909, 36-1910. Payette River, South Fork and Soldier Mountain Wildlife preserve. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised I.C., ch. 5, § 1.  
§§ 36-1909, 36-1910, as added by 1976, ch.

**36-1911. Springfield bird preserve.** — There is hereby created within the county of Bingham, in the state of Idaho and within the following described boundaries, a limited wildlife preserve to be known as the Springfield Bird Haven: beginning at the north  $\frac{1}{4}$  corner of section 15 in township 4 south, range 32 east of the Boise meridian, and running thence north to the northwest corner of the southwest  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of section 10 in the township and range aforesaid; thence east to the northeast corner of the southeast  $\frac{1}{4}$  of the southeast  $\frac{1}{4}$  of said section; thence south to the Roosevelt highway; thence east along the north line of said highway, a distance of 160 rods, more or less, to the east line of the southwest  $\frac{1}{4}$  of section 11 in the township and range aforesaid; thence south to the center of section 14, in the township and range aforesaid; thence west to the southwest corner of the southeast  $\frac{1}{4}$  of the northeast  $\frac{1}{4}$  of section 15 aforesaid; thence northwesterly in a straight diagonal line to the point of beginning.

(a) Game Birds and Waterfowl Protected. Other provisions of section 36-1902, Idaho Code, notwithstanding, this section shall apply only to protected wild birds.

**History.**

I.C., § 36-1911, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES****Cross References.**

Birds protected generally, § 36-1102.

**Compiler's Notes.**

As enacted by S.L. 1976, ch. 95, § 2, this section did not have a subsection (b).

**36-1912. Minidoka Forest state bird preserve. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-

1912, as added by 1976, ch. 95, § 2, p. 315,  
was repealed by S.L. 1988, ch. 27, § 1.

**36-1913. Pocatello Forest preserve. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-

1913, as added by 1976, ch. 95, § 2, p. 315,  
was repealed by S.L. 1985, ch. 5, § 1.

**36-1914. General penal provisions applicable to various preserves.  
[Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-

1914, as added by 1976, ch. 95, § 2, p. 315,  
was repealed by S.L. 1992, ch. 81, § 39.

**CHAPTER 20****PACIFIC MARINE FISHERIES COMPACT****SECTION.**

**36-2001. Pacific marine fisheries compact — Execution.**

36-2002. Form and contents.

**SECTION.**

**36-2003. Commission — Members.**

**36-2001. Pacific marine fisheries compact — Execution.** — The governor of the state of Idaho is authorized to execute a compact on behalf of this state with the states of California, Oregon and Washington for the purpose of cooperating with those states in the Pacific [States] Marine Fisheries Commission.

**History.**

I.C., § 36-2001, as added by 1976, ch. 95,  
§ 2, p. 315.

**STATUTORY NOTES****Prior Laws.**

Former title 36, chapter 20, comprised of §§ 36-2001 to 36-2004, was repealed by S.L. 1976, ch. 95, § 1.

**Compiler's Notes.**

The bracketed insertion was added by the

compiler to supply the correct commission name, which was changed in 1989. The state of Alaska adopted the compact and joined the commission in 1962. See <http://www.psmfc.org>.

**36-2002. Form and contents.** — The form and contents of such compact shall be substantially as provided in this section, and the effect of its provisions shall be interpreted and administered in conformity with the provisions of this section:

## The Pacific Marine Fisheries Compact

The contracting states do hereby agree as follows:

### Article I

The purposes of this compact are and shall be to promote the better utilization of fisheries, marine, shell, and anadromous, which are of mutual concern, and to develop a joint program of protection and prevention of physical waste of such fisheries in all of those areas of the Pacific Ocean and adjacent waters over which the compacting states jointly or separately now have or may hereafter acquire jurisdiction.

Nothing herein contained shall be construed so as to authorize the compacting states or any of them to limit the production of fish or fish products for the purpose of establishing or fixing the prices thereof or creating and perpetuating a monopoly.

### Article II

This agreement shall become operative immediately as to those states executing it whenever two (2) or more of the compacting states have executed it in the form that is in accordance with the laws of the executing states and the Congress has given its consent.

### Article III

Each state joining herein shall appoint, as determined by state statutes, one (1) or more representatives to a commission hereby constituted and designated as the Pacific Marine Fisheries Commission, of whom one (1) shall be the administrative or other officer of the agency of such state charged with the conservation of the fisheries resources to which this compact pertains. This commission shall be invested with the powers and duties set forth herein. The term of each commissioner of the Pacific Marine Fisheries Commission shall be four (4) years. A commissioner shall hold office until his successor shall be appointed and qualified, but such successor's term shall expire four (4) years from legal date of expiration of the term of his predecessor. Vacancies occurring in the office of such commissioner from any reason or cause shall be filled for the unexpired term, or a commissioner may be removed from office, as provided by the statutes of the state concerned. Each commissioner may delegate in writing from time to time to a deputy the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the commission.

Voting powers under this compact shall be limited to one (1) vote for each state regardless of the number of representatives.

### Article IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about the conservation and the prevention of

the depletion and physical waste of the fisheries, marine, shell, and anadromous, in all of those areas of the Pacific Ocean over which the states signatory to this compact jointly or separately now have or may hereafter acquire jurisdiction. The commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their respective jurisdictions and said conservation zones to promote the preservation of those fisheries and their protection against overfishing, waste, depletion, or any abuse whatsoever and to assure a continuing yield from the fisheries resources of the signatory parties hereto.

To that end the commission shall draft and, after consultation with the advisory committee hereinafter authorized, recommend to the governors and legislative branches of the various signatory states hereto legislation dealing with the conservation of the marine, shell, and anadromous fisheries in all of those areas of the Pacific Ocean over which the signatory states jointly or separately now have or may hereafter acquire jurisdiction. The commission shall, more than one (1) month prior to any regular meeting of the legislative branch in any state signatory hereto, present to the governor of such state its recommendations relating to enactments by the legislative branch of that state in furthering the intents and purposes of this compact.

The commission shall consult with and advise the pertinent administrative agencies in the signatory states with regard to problems connected with the fisheries and recommend the adoption of such regulations as it deems advisable and which lie within the jurisdiction of such agencies. The commission shall have power to recommend to the states signatory hereto the stocking of the waters of such states with marine, shell, or anadromous fish and fish eggs or joint stocking by some or all of such states, and, when two (2) or more of the said states shall jointly stock waters, the commission shall act as the coordinating agency for such stocking.

#### Article V

The commission shall elect from its number a chairman and a vice-chairman and shall appoint and at its pleasure remove or discharge such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications, and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one (1) or more offices for the transaction of its business, and may meet at any time or place within the territorial limits of the signatory states, but must meet at least once a year.

#### Article VI

No action shall be taken by the commission except by the affirmative vote of a majority of the whole number of compacting states represented at any meeting. No recommendation shall be made by the commission in regard to any species of fish except by the vote of a majority of the compacting states which have an interest in such species.

#### Article VII

The fisheries research agencies of the signatory states shall act in collaboration as the official research agency of the Pacific Marine Fisheries Commission.

An advisory committee to be representative of the commercial fisherman, commercial fishing industry, and such other interests of each state as the commission deems advisable shall be established by the commission as soon as practicable for the purpose of advising the commission upon such recommendations as it may desire to make.

### Article VIII

Nothing in this compact shall be construed to limit the powers of any state or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by any state imposing additional conditions and restrictions to conserve its fisheries.

### Article IX

Continued absence of representation or of any representative on the commission from any state party hereto shall be brought to the attention of the governor thereof.

### Article X

The states agree to make available annual funds for the support of the Commission on the following basis: Eighty percent (80%) of the annual budget shall be shared equally by those member states having as a boundary the Pacific Ocean; five percent (5%) of the annual budget shall be contributed by any other member state; the balance of the annual budget shall be shared by those member states, having as a boundary the Pacific Ocean, in proportion to the primary market value of the products of their commercial fisheries on the basis of the latest five (5) year catch records.

The annual contribution of each member state shall be figured to the nearest one hundred dollars (\$100). This amended article shall become effective upon its enactment by the states of Alaska, California, Idaho, Oregon, and Washington and upon ratification by Congress by virtue of the authority vested in it under Article I, Section 10, of the Constitution of the United States.

### Article XI

This compact shall continue in force and remain binding upon each state until renounced by it. Renunciation of this compact must be preceded by sending six (6) months' notice in writing of intention to withdraw from the compact to the other parties hereto.

### Article XII

The states of Alaska or Hawaii, or any state [having] rivers and [or] streams tributary to the Pacific Ocean may become a contracting state by enactment of the Pacific Marine Fisheries Compact. Upon admission of any new state to the compact, the purposes of the compact and the duties of the commission shall extend to the development of joint programs for the conservation, protection, and prevention of physical waste of fisheries in

which the contracting states are mutually concerned and to all waters of the newly admitted state necessary to develop such programs. This article shall become effective upon its enactment by the states of California, Oregon and Washington, and upon ratification by Congress by virtue of the authority vested in it under Article I, Section 10, of the Constitution of the United States.

#### **History.**

I.C., § 36-2002, as added by 1976, ch. 95,  
§ 2, p. 315.

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

The bracketed insertions in Article XII were added by the compiler to supply the correct words missing or incorrect in the original enactment.

The name of the Pacific Marine Fisheries Commission, referred to in the compact, was amended in 1989 to Pacific States Marine Fisheries Commission. See <http://www.psmfc.org>.

**36-2003. Commission — Members.** — In furtherance of the provisions contained in the compact, there shall be three (3) members of the commission from the state of Idaho. One (1) such commissioner shall be the director or other officer of the Idaho department of fish and game charged with the conservation of the state's anadromous fisheries resource. The other two (2) commissioners shall be appointed by the governor: one (1) commissioner shall be a member of the fish and game commission and one (1) commissioner shall be a member of the state legislature.

#### **History.**

I.C., § 36-2003, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1987, ch. 197, § 1, p. 410.

#### **STATUTORY NOTES**

##### **Cross References.**

Director of department of fish and game,  
§ 36-106.

Fish and game commission, § 36-102.

## **CHAPTER 21**

### **OUTFITTERS AND GUIDES**

#### **SECTION.**

- 36-2101. Declaration of policy.
- 36-2102. Definitions.
- 36-2103. Exceptions.
- 36-2104. License a prerequisite for outfitting and guiding.
- 36-2105. Creation of Idaho outfitters and guides licensing board.
- 36-2106. Appointment and qualification of members — Organization of board.
- 36-2107. Powers and duties of board.
- 36-2108. Application for license — Contents — Fee — Qualifications — Term — Bond.

#### **SECTION.**

- 36-2109. Form and term of license — Notice of denial.
- 36-2110. Operations of licensees — Adjustment of area — Rules.
- 36-2111. Disposition of funds — Continuing appropriation.
- 36-2112. Licensed outfitters may act as guides.
- 36-2113. Revocation or suspension of license — Grounds.
- 36-2114. Revocation or suspension of license — Review of denial of license — Procedure.
- 36-2115. Review of board action.

## SECTION.

- 36-2116. Complaint for violation — Prosecution by county attorney.  
 36-2117. Penalty for violations — Prosecuting attorney to prosecute.  
 36-2117A. Civil penalty for violations.  
 36-2118. License a prerequisite for recovery of compensation.

## SECTION.

- 36-2119. Board orders and rules.  
 36-2120. Idaho, Oregon and Washington boundary waters — Snake River — Reciprocity. [Null and void.]

**36-2101. Declaration of policy.** — The natural resources of the state of Idaho are an invaluable asset to every community in which they abound. Every year, in rapidly increasing numbers, the inhabitants of the state of Idaho and nonresidents are enjoying the benefits of Idaho's recreational opportunities. The tourist trade is of vital importance to the state of Idaho, and the recreational value of Idaho's natural resources is such that the number of persons who are each year participating in their enjoyment is steadily increasing. The intent of this legislation is to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the deserts, mountains, rivers, streams, lakes, reservoirs and other natural resources of Idaho, and the fish and game therein, and to that end to regulate and license those persons who undertake for compensation to provide equipment and personal services to such persons, for the explicit purpose of safeguarding the health, safety, welfare and freedom from injury or danger of such persons, in the exercise of the police power of this state. It is not the intent of this legislation to interfere in any way with the business of livestock operations, nor to prevent the owner of pack animals from using same to accommodate friends where no consideration is involved for the use thereof, nor is it the intent of this legislation to interfere in any way with the right of the general public to enjoy the recreational value of Idaho's deserts, mountains, rivers, streams, lakes, reservoirs and other natural resources when the services of commercial outfitters and guides are not utilized, nor to interfere with the right of the United States to manage the public lands under its control.

**History.**

I.C., § 36-2101, as added by 1976, ch. 95, § 2, p. 315; am. 1988, ch. 269, § 1, p. 886.

**STATUTORY NOTES****Prior Laws.**

Former title 36, chapter 21, comprised of §§ 36-2101 to 36-2103, was repealed by S.L.

1976, ch. 95, § 1.

**JUDICIAL DECISIONS****ANALYSIS**

Construed with federal statutes.

Due process.

Effect on interstate commerce.

Equal protection.

Police power.

**Construed With Federal Statutes.**

This chapter does not directly conflict with the Federal Boat Safety Act of 1971 (46 USCS §§ 1451 to 1489) or the former Small Passenger-Carrying Vessels Act (46 USCS §§ 390 to 390g, 404) and those statutes do not evince a clear and manifest congressional intent to preempt the state's regulation of commercial rafting operations. *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

The Federal Boat Safety Act of 1971 (46 USCS §§ 1451 to 1489) is directed toward ensuring that recreational boats and equipment are manufactured according to federal standards and addresses the use of boats to a limited extent, but is not directed toward the activities covered by this chapter. In contrast to the federal act, this chapter seeks to ensure safety in white-water rafting, hunting, and other activities conducted for profit by guides and outfitters. *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

**Due Process.**

This chapter is neither "under-inclusive" nor "void for vagueness." *State v. Koller*, 122 Idaho 409, 835 P.2d 644 (1992).

**Effect on Interstate Commerce.**

This chapter regulates evenhandedly to promote a legitimate local public interest with only an incidental effect on interstate

commerce; the minimal burden which this chapter imposes on interstate commerce is more than offset by its benefits. *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

**Equal Protection.**

This chapter does not violate right to equal protection even though a private land owner can engage in outfitting without a license so long as he does not charge for the service. The legislature's distinction between commercial and noncommercial outfitting is rationally related to its expressed objective of "safe-guarding the health, safety, welfare and freedom" of individuals while in turn "promot[ing] and encourag[ing] residents and nonresidents alike to participate in the enjoyment and use" of Idaho's natural resources. *State v. Koller*, 122 Idaho 409, 835 P.2d 644 (1992).

**Police Power.**

The state of Idaho acted pursuant to its police power in enacting and implementing this chapter and, thus, is entitled to deference. *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

In enacting this chapter, the legislature intended to regulate commercial outfitting whether it occurs on public or private land and such regulation is a reasonable use of the legislature's police power. *State v. Koller*, 122 Idaho 409, 835 P.2d 644 (1992).

**36-2102. Definitions.** — (a) "Person" includes any individual, firm, partnership, corporation or other organization or any combination thereof.

(b) "Outfitter" includes any person who, while engaging in any of the acts enumerated herein in any manner: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and hazardous desert or mountain excursions. Any firm, partnership, corporation or other organization or combination thereof operating as an outfitter shall designate one (1) or more individuals as agents who shall, together with the licensed outfitter, be held responsible for the conduct of the licensed outfitter's operations and who shall meet all of the qualifications of a licensed outfitter.

(c) "Guide" is any natural person who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed. Any such person not employed by a licensed outfitter who offers or provides facilities or services as specified in subsection (b) of this section shall be deemed in violation of the provisions of this chapter, except: (1) any employee of the state of Idaho or the United States when acting in his official capacity, or (2) any natural person who is employed by a licensed outfitter

solely for the following activities: caring for, grooming or saddling of livestock, cooking, woodcutting, and transporting people, equipment and personal property on public roads shall be exempt from the provisions of this chapter.

(d) "Board" means the Idaho outfitters and guides licensing board.

(e) "Resident" means a person who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license.

(f) "Nonresident" means any person not included in subsection (e) of this section.

(g) "License year" means that period of time beginning on the date an outfitter's or guide's license is issued and ending on the anniversary of the date of issuance in the following year.

(h) "Individual" means any person other than a partnership, corporation or any other organization or combination thereof.

**History.**

I.C., § 36-2102, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 162, § 1, p. 418; am.

1988, ch. 269, § 2, p. 886; am. 1990, ch. 254,

§ 1, p. 726; am. 2001, ch. 271, § 1, p. 988.

#### STATUTORY NOTES

**Compiler's Notes.**

Although the term "license year" is defined in § 36-2102 and used extensively in § 36-2108, § 36-2109 was amended in 2010 to

make all licenses expire on March 31 of the year following issuance of the license. This 2010 change obviates the need for the defined term in § 36-2102.

#### JUDICIAL DECISIONS

**Service.**

Because renting clothing and helmets to the plaintiffs was merely incidental to the defendant's leasing of equipment, and because the defendant's decision to retrieve a disabled snowmachine could not be said to be a service to the plaintiffs, § 6-1206 did not

operate to limit the defendant's liability. *Hanks v. Sawtelle Rentals, Inc.*, 133 Idaho 199, 984 P.2d 122 (1999).

**Cited in:** *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

**36-2103. Exceptions.** — The foregoing definitions of the terms "outfitter" and "guide" will not apply to a person who furnishes, rents or leases, whether or not for compensation or gain or promise thereof, a pack or saddle horse, or other equipment, to a hunter or a fisherman. A person so furnishing, renting or leasing a pack or saddle horse or other equipment, shall not be considered an "outfitter" or "guide" if, on an incidental basis, they accompany a hunter, not to include extended camping, for the purpose of maintaining the safety and well-being of the livestock used to retrieve harvested big game. Additionally, the foregoing definition of "outfitter" and "guide" shall not apply to members of a nonprofit organization if the organization meets the following criteria: (i) it is exempt from the payment of federal income taxes under section 501(c)(3) of the Internal Revenue Code; (ii) its purpose is to provide outdoor experiences to young persons under twenty-one (21) years of age and to its leaders; and (iii) it provides outfitting and guiding services to its own bona fide members on a not for profit basis. If the members of the nonprofit organization provide outfitting or guiding services to persons who are not its members and leaders, the

provisions of this chapter shall apply to that organization, its members and leaders.

**History.** § 2, p. 315; am. 1991, ch. 157, § 1, p. 373; am. I.C., § 36-2103, as added by 1976, ch. 95, 2001, ch. 271, § 2, p. 988.

#### STATUTORY NOTES

**Federal References.**

Section 501(c)(3) of the Internal Revenue Code, referred to in this section, is compiled as 26 USCS § 501(c)(3).

**Effective Dates.**

Section 2 of S.L. 1991, ch. 157 declared an emergency. Approved March 21, 1991.

**36-2104. License a prerequisite for outfitting and guiding. —**

(1) It is a misdemeanor for any person to engage in the business of or act in the capacity of an outfitter or outfitting, or in the occupation of guiding, unless such person has first secured an outfitter's or guide's license in accordance with the provisions of this chapter, or for any person to knowingly and willingly conspire to violate the provisions of this chapter.

(2) It is a misdemeanor for any person to provide consideration or compensation for services requiring an outfitting or guiding license to another person, when such person providing consideration or compensation knows the person providing such services is not duly licensed as an outfitter or guide in accordance with the provisions of this chapter.

(3) Any person who shall violate the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, such person shall be punished as provided in section 36-2117, Idaho Code.

**History.**

I.C., § 36-2104, as added by 1976, ch. 95, § 2, p. 315; am. 1982, ch. 174, § 1, p. 458; am.

1988, ch. 269, § 3, p. 886; am. 1990, ch. 254, § 2, p. 726; am. 2008, ch. 112, § 1, p. 314.

#### STATUTORY NOTES

**Amendments.**

The 2008 amendment, by ch. 112, redesignated subsection (a) and former subsection (b) as present subsections (1) and (3); added

subsection (2); and substituted "this chapter" for "this act" preceding "or for any person" in subsection (1).

#### JUDICIAL DECISIONS

**Providing Services Without License.**

Where outfitter was not licensed as an outfitter for bear hunts but provided outfitter services for such, he violated Idaho law; therefore, the bears that were hunted, killed, and taken by means of the services provided

by the outfitter were illegally taken. *United States v. Powers*, 923 F.2d 131 (9th Cir. 1990).

**Cited in:** *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

**36-2105. Creation of Idaho outfitters and guides licensing board. —**

— There is hereby created in the department of self-governing agencies the Idaho outfitters and guides licensing board, herein referred to as "the board," consisting of four (4) members appointed by the governor, and one (1) member appointed by the Idaho fish and game commission, as provided in section 36-2106, Idaho Code.

**History.**

I.C., § 36-2105, as added by 1976, ch. 95, § 2, p. 315; am. 1988, ch. 269, § 4, p. 886.

**STATUTORY NOTES****Cross References.**

Department of self-governing agencies, et seq.  
§ 67-2601 et seq.

Idaho fish and game commission, § 36-102

**36-2106. Appointment and qualification of members — Organization of board.** — One (1) member shall be a member of the Idaho fish and game commission, or a person selected by that body. Each appointment made by the fish and game commission shall be for a term of three (3) years. One (1) member shall be selected from the public. Three (3) members of the board shall be qualified and licensed outfitters and guides who have not had less than five (5) years' experience in the business of outfitting and guiding in the state of Idaho. Each appointment shall be for the term of three (3) years and each board member shall hold office for a term of three (3) years. Upon the death, resignation or removal of any but the member representing the fish and game commission the governor shall appoint a member to fill out the unexpired term as provided in this section. Immediately upon the creation of a vacancy one (1) of the positions held by an outfitter or guide, either through expiration of term, death, resignation or removal, the Idaho outfitters and guides association shall submit to the governor the names of two (2) qualified persons for each such vacancy created and the appointment to fill such vacancy shall be made by the governor from the names submitted within thirty (30) days after the receipt by the governor of the names submitted. All appointments to the board made after July 1, 1986, shall be subject to the advice and consent of the senate. Appointments to fill any vacancy other than that created by the expiration of a term shall be made for the unexpired term. A majority of said board shall constitute a quorum. The board shall meet at least four (4) times a year, and at least two (2) meetings shall be held in Boise, Idaho. Each member of the board shall be compensated as provided by section 59-509(h), Idaho Code. The member representing the fish and game commission shall be paid by the fish and game commission.

**History.**

I.C., § 36-2106, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 162, § 2, p. 418; am. 1978, ch. 92, § 5, p. 171; am. 1978, ch. 131, et seq.

§ 1, p. 292; am. 1980, ch. 247, § 30, p. 582; am. 1986, ch. 236, § 1, p. 647; am. 1988, ch. 269, § 5, p. 886; am. 1993, ch. 257, § 1, p. 886.

**STATUTORY NOTES****Cross References.**

Idaho fish and game commission, § 36-102 et seq.

members of the fish and game commission and the outfitters and guides board serving on the effective date of this act are hereby confirmed and retained for the duration of each member's term of office."

**Compiler's Notes.**

For more information on the Idaho outfitters and guides association, see <http://www.ioga.org>.

Section 4 of S.L. 1976, ch. 95, read: "The

**Effective Dates.**

Section 6 of S.L. 1978, ch. 92 declared an emergency. Approved March 14, 1978.

**36-2107. Powers and duties of board.** — The board which may by written agreement authorize the bureau of occupational licenses as agent to act in its interest, shall have the following duties and powers:

(a) To conduct examinations to ascertain the qualifications of applicants for outfitter's or guide's licenses, and to issue such licenses to qualified applicants, with such restrictions and limitations thereon as the board may find reasonable.

(b) To prescribe and establish rules of procedure to carry into effect the provisions of this chapter including, but not limited to, rules prescribing all requisite qualifications of training, experience, knowledge of rules of governmental bodies, condition and type of gear and equipment, examinations to be given applicants, whether oral, written or demonstrative, or a combination thereof.

(c) To conduct hearings and proceedings to suspend, revoke or restrict the licenses of outfitters or guides, and to suspend, revoke or restrict said licenses for due cause in the manner hereinafter provided.

(d) The board is expressly vested with the power and the authority to enforce the provisions of this chapter including obtaining injunctive relief and to make and enforce any and all reasonable rules which shall by it be deemed necessary and which are not in conflict with the provisions of this chapter, for the express purpose of safeguarding the health, safety, welfare and freedom from injury or danger of those persons utilizing the services of outfitters and guides, and for the conservation of wildlife and range resources.

(e) The board shall have the power to cooperate with the federal and state government through its appropriate agency or instrumentality in matters of mutual concern regarding the business of outfitting and guiding in Idaho.

(f) The board shall have the power throughout the state of Idaho to request the attendance of witnesses and the production of such books, records and papers as may be required at any hearing before it. The board or its hearing officer may issue and serve subpoenas or subpoenas duces tecum in a manner consistent with chapter 52, title 67, Idaho Code, the rules of the office of the attorney general, and rules 45(e)(2) and 45(g) of the Idaho rules of civil procedure. Payment of fees or mileage for service of subpoenas or attendance of witnesses shall be paid by the board consistent with the provisions of chapter 52, title 67, Idaho Code, the rules of the office of the attorney general, and rule 45(e)(1) of the Idaho rules of civil procedure. Disobedience of a subpoena or subpoena duces tecum may be enforced by making application to the district court. Disobedience by a licensee of a subpoena or subpoena duces tecum issued by the board shall be deemed a violation of a board order.

(g) The board shall have the power to appoint an executive director to serve at the pleasure of the board. The executive director shall carry out such administrative duties as delegated to the director by the board. The board may, in its discretion, refuse, sustain or reverse, by majority vote, any action or decision of the executive director. The executive director shall be exempt from the provisions of chapter 53, title 67, Idaho Code, and shall receive a salary that is fixed by the board.

(h) The board shall have the power to hire enforcement agents in order to conduct investigations and enforce the provisions of this chapter. All

enforcement agents appointed by the board who are certified by the Idaho peace officer standards and training advisory council, shall have the power of peace officers limited to:

1. Enforcement of the provisions of this chapter.
2. Responding to express requests from other law enforcement agencies for aid and assistance in enforcing other laws. For purposes of this section, such a request from a law enforcement agency shall mean only a request as to a particular and singular violation or suspicion of violation of law, and shall not constitute a continuous request for assistance outside the purview of enforcement of the provisions of this chapter.

(i) By August 1 of each year, the board shall provide to the director of the department of fish and game, in a manner and form prescribed by the director, the number of each species of big game taken in each management unit by clients of licensed outfitters between July 1 of the immediately preceding calendar year and June 30 of the current calendar year.

(j) The board shall by rule designate the number of deer or elk tags allocated pursuant to section 36-408(4), Idaho Code, among the authorized operating areas within the game management area, unit or zone.

#### **History.**

I.C., § 36-2107, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 131, § 2, p. 292; am. 1988, ch. 269, § 6, p. 886; am. 1989, ch. 360, § 1, p. 904; am. 1991, ch. 131, § 1, p. 287; am. 1991, ch. 268, § 1, p. 658; am. 1997, ch. 136, § 2, p. 404; am. 2001, ch. 170, § 2, p. 582; am. 2001, ch. 271, § 3, p. 988; am. 2003, ch. 205, § 1, p. 546; am. 2008, ch. 112, § 2, p. 314.

#### **STATUTORY NOTES**

##### **Cross References.**

Bureau of occupational licenses, § 67-2605.  
Director of department of fish and game, § 36-106.

##### **Amendments.**

This section was amended by two 1991 acts which appear to be compatible and have been compiled together.

The 1991 amendment, by ch. 131, § 1, in subdivision (g) added the second sentence.

The 1991 amendment, by ch. 268, § 1, added subdivision (i).

The 1991 amendment, by both ch. 131, § 1 and ch. 268, § 1, in subdivision (b) deleted a comma following "provisions of this act" and added a comma following "including" and "not limited to".

This section was amended by two 2001 acts which appear to be compatible and have been compiled together.

The 2001 amendment, by ch. 170, § 2, in subsection (j), substituted "section 36-408(4)" for "section 36-408(d)".

The 2001 amendment, by ch. 271, § 3, in subsection (b), deleted "and regulations" following "rule of procedure"; substituted "rules" for "regulations"; deleted "and regulations" following "knowledge of rules"; and deleted the language beginning "By January 15 of each year," and ending "be provided on such form" following subsection (i).

The 2008 amendment, by ch. 112, rewrote subsection (f), revising provisions relating to subpoenas and subpoenas duces tecum and providing for payment of certain fees and mileage.

##### **Compiler's Notes.**

The reference to the Idaho peace officer standards and training advisory council, in the introductory paragraph in subsection (h), should probably be to the Idaho peace officers standards and training council. See § 19-5101 et seq.

##### **Effective Dates.**

Section 4 of S.L. 1991, ch. 131 provided that this section should be effective July 1, 1991.

**36-2108. Application for license — Contents — Fee — Qualifications — Term — Bond.** — (a) Each applicant for an outfitter's or guide's license shall make application for such license upon a form to be prescribed and furnished by the board.

1. All applications for an outfitter's license shall be signed by the applicant, under oath or affirmation that all information supplied by him in the application form is true and correct as he verily believes and shall be duly notarized. Such applications shall include, but are not limited to, a worded description of the boundaries of the operating area in which such activity will be conducted.

2. All applications for a guide's license shall be signed by the applicant. Such application shall contain the written endorsement of the outfitter(s) by whom the applicant will be employed.

(b) Applications shall be made to and filed with the board and, unless arrangements have been made otherwise with the board, accompanied by proof of eligibility for a bond payable to the person or persons employing the licensee and in a form approved by the board in the sum of ten thousand dollars (\$10,000) for outfitters, to be executed by a qualified surety, duly authorized to do business in this state, conditioned that for the current license year said applicant, his agents and employees, if said license is issued to him, shall conduct his business as an outfitter without fraud or fraudulent representation, and will faithfully perform his contracts with and duties to his patrons; said bond shall be filed with the board before issuance of the license as provided herein.

(c) The board, in its discretion, may make such additional investigation and inquiry relative to the applicant and his qualifications as it shall deem advisable, provided that final decision by the board upon an application submitted by an applicant who has held during the preceding license year a license of the same kind for which application is made, and upon an application submitted by an applicant not holding during the preceding license year a license of the same kind or embracing the same activity(ies) or area for which application is made, shall be made not later than the end of the license year in which the board receives all materials required to be submitted in order to complete a license application or ninety (90) days from the date the board receives all such materials, whichever is later.

(d) The applicant shall pay license, penalty, amendment and application fees to the board as hereinafter provided:

1. The license fee shall be paid prior to the issuance of a license.
2. The license fee shall be used for the investigation of applicants, for enforcement of this chapter, and for the administration costs of the board.
3. The license fee for outfitters for the 2005 license year shall be three hundred dollars (\$300) for online licensing and three hundred fifty dollars (\$350) for offline licensing; for the 2006 license year it shall be three hundred twenty-five dollars (\$325) for online licensing and three hundred seventy-five dollars (\$375) for offline licensing; for the 2007 license year it shall be three hundred fifty dollars (\$350) for online licensing and four hundred dollars (\$400) for offline licensing; for the 2008 license year it shall be three hundred seventy-five dollars (\$375) for online licensing and four hundred twenty-five dollars (\$425) for offline licensing; for the 2009 license year, and for each year thereafter, it shall be four hundred dollars (\$400) for online licensing and four hundred fifty dollars (\$450) for offline licensing; the license fee for a designated agent as defined in section 36-2102(b), Idaho Code, for the 2005 license year shall be one hundred

twenty dollars (\$120) for online licensing and one hundred forty dollars (\$140) for offline licensing; for the 2006 license year it shall be one hundred twenty-five dollars (\$125) for online licensing and one hundred fifty dollars (\$150) for offline licensing; for the 2007 license year it shall be one hundred thirty dollars (\$130) for online licensing and one hundred sixty dollars (\$160) for offline licensing; for the 2008 license year, and for each year thereafter, it shall be one hundred forty dollars (\$140) for online licensing and one hundred sixty dollars (\$160) for offline licensing; and the license fee for guides for the 2005 license year shall be ninety-five dollars (\$95.00) for online licensing and one hundred five dollars (\$105) for offline licensing; for the 2006 license year it shall be ninety-five dollars (\$95.00) for online licensing and one hundred ten dollars (\$110) for offline licensing; for the 2007 license year it shall be one hundred dollars (\$100) for online licensing and one hundred fifteen dollars (\$115) for offline licensing; for the 2008 license year, and for each year thereafter, it shall be one hundred five dollars (\$105) for online licensing and one hundred fifteen dollars (\$115) for offline licensing.

4. A penalty fee in the amount of fifty dollars (\$50.00), which shall increase to one hundred fifty dollars (\$150) beginning January 1, 2005, may be charged in addition to the regular outfitter's license fee for any such renewal applicant whose application is not complete by the end of the outfitter's license year; this does not apply to a new applicant for an outfitter's license.

5. A seventy-five dollar (\$75.00) fee, which shall increase to two hundred dollars (\$200) beginning January 1, 2005, shall be charged for every amendment to an outfitter's license other than a minor amendment, a ten dollar (\$10.00) fee, which shall increase to thirty-five dollars (\$35.00) beginning January 1, 2005, shall be charged for every minor amendment to an outfitter's license, and a ten dollar (\$10.00) fee, which shall increase to twenty dollars (\$20.00) beginning January 1, 2005, shall be charged for every amendment to the license of a designated agent or guide.

6. The following fees shall be established annually by the board and shall be used for application related expenses: a one-time application fee for outfitters not to exceed four hundred dollars (\$400); a one-time application fee for designated agents not to exceed fifty dollars (\$50.00); and a one-time application fee for guides not to exceed ten dollars (\$10.00), the maximum of which shall increase to twenty dollars (\$20.00) beginning January 1, 2005. The board shall establish by rule a policy to refund unused application fees and shall establish by rule fees for expedited, exceptional, resubmittal or emergency processing of license applications, a fee credit for electronic filing of applications and a fee for the use of credit cards corresponding to the cost to the agency of processing the card use.

**History.**

I.C., § 36-2108, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 131, § 3, p. 292; am. 1983, ch. 74, § 1, p. 160; am. 1984, ch. 262, § 1, p. 632; am. 1988, ch. 269, § 7, p. 886; am. 1988, ch. 288, § 1, p. 922; am. 1991, ch. 131, § 2, p. 287; am. 1998, ch. 339, § 1, p. 1085; am. 2000, ch. 290, § 1, p. 1005; am. 2001, ch.

271, § 4, p. 988; am. 2003, ch. 75, § 1, p. 247; am. 2003, ch. 77, § 1, p. 250; am. 2004, ch. 158, § 1, p. 508.

#### STATUTORY NOTES

##### **Amendments.**

This section was amended by two 2003 acts which appear to be compatible and have been compiled together.

The 2003 amendment, by ch. 75, added the language beginning: "and shall establish by rule fees for ..." at the end of the section.

The 2003 amendment, by ch. 77, in subsection (c), deleted "shall not be later than March 31 of the year in which the board receives all materials required to be submitted in order to complete a license application or thirty (30) days from the date the board receives all such materials, whichever is later;" preceding "and upon an application", substituted "shall be made not later than the end of the license year" for "not later than March 31 of the year"

near the end, and made a minor punctuation change; and substituted "this chapter" for "this act" in paragraph (d)2.

##### **Compiler's Notes.**

Although the term "license year" is defined in § 36-2102 and used extensively in § 36-2108, § 36-2109 was amended in 2010 to make all licenses expire on March 31 of the year following issuance of the license. This 2010 change obviates the need for the defined term in § 36-2102.

The letters "s" in subsection (a)2. and "ies" in subsection (c) in parentheses so appeared in the law as enacted.

#### JUDICIAL DECISIONS

##### DECISIONS UNDER PRIOR LAW

##### **Fees.**

The license fee differential between residents and nonresidents is too small to have anything but an incidental effect on interstate

commerce. *Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd.*, 709 F.2d 1250 (9th Cir. 1983).

**36-2109. Form and term of license — Notice of denial.** — (a) Upon concurrence of a majority, the board, in its discretion may issue a license to any applicant who has filed an application in proper form with the board including, but not limited to, payment of the license fee and furnishing of bond. Said license shall be in the form prescribed by the board, shall be valid for the year issued from the date issued and shall expire on March 31 of the following year; provided, that no outfitter's or guide's license may be sold, assigned or otherwise transferred either by any holder thereof or by the operation of law except as provided in this chapter. The board may prescribe by rule that limitations or qualifications placed upon an outfitter's or guide's license as provided in this chapter shall be indicated on the face of the license or as an attachment to the license which shall be considered a part of the license.

(b) A license granted by the board including any attachment thereto shall specify the activities licensed and the exact territorial limits of the outfitter's area of operation and shall specify the species of game to be hunted. In so approving and/or licensing any outfitter's or guide's activity, the board shall consider the following matters, among others:

1. The length of time in which the applicant has operated in that area;
2. The extent to which the applicant is qualified by reason of experience, equipment or resources to operate in that area;
3. The applicant's previous safety record;
4. The accessibility of the area, the particular terrain and the weather conditions normal to that area during the outfitter's or guide's season;

5. The total amount of outfitter's area requested by any applicant giving due consideration to the effect that such area license grant would have upon the environment, the amount of game that can be harvested, and the number of persons that can be adequately served in the area.

(c) The board shall refuse to issue any license to any applicant for an outfitter's or guide's license who the board finds is not a competent person of good moral character, less than eighteen (18) years of age and does not possess a working knowledge of the game and fishing laws of the state of Idaho and the regulations of the United States forest service. The board shall also refuse to issue an outfitter's license to any applicant who the board finds does not have sufficient financial responsibility to conduct adequately the business of an outfitter. The board shall refuse to issue any license to a firm, partnership, corporation or other organization or any combination thereof that fails to have at least one (1) designated agent conducting its outfitting business who meets all of the qualifications and requirements of a licensed outfitter. The board may also refuse to grant an outfitter's or guide's license to any applicant for violation of any of the provisions hereinafter specified in this chapter as grounds for revocation or suspension of an outfitter's or guide's license. If the application is denied, the board shall notify the applicant, in writing, of the reasons for such denial within ten (10) days and if the applicant shall correct, to the satisfaction of the board, such reasons within thirty (30) days of receipt of such notice and if, thereafter, a majority of the board concur, the board may issue a license to the applicant.

(d) No license shall be issued by the board until a majority thereof has reported favorably thereon; except, an application for a license identical to a license held during the previous year may be issued on approval by one (1) board member providing there is no adverse information on file regarding the applicant.

**History.**

I.C., § 36-2109, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 162, § 3, p. 418; am. 1978, ch. 131, § 4, p. 292; am. 1982, ch. 174,

§ 2, p. 458; am. 1988, ch. 269, § 8, p. 886; am. 1998, ch. 299, § 1, p. 987; am. 2003, ch. 76, § 1, p. 249; am. 2010, ch. 39, § 1, p. 69.

**STATUTORY NOTES****Amendments.**

The 2010 amendment by ch. 39, substituted "the year issued from the date issued and shall expire on March 31 of the following year" for "the licensing year or years for which issued from the date issued until the end of the license year or years for which it is issued" in the second sentence of subsection (a).

**Compiler's Notes.**

Although the term "license year" is defined in § 36-2102 and used extensively in § 36-2108, § 36-2109 was amended in 2010 to make all licenses expire on March 31 of the year following issuance of the license. This 2010 change obviates the need for the defined term in § 36-2102.

**JUDICIAL DECISIONS**

**Cited in:** Grand Canyon Dories, Inc. v. Idaho Outfitters & Guides Bd., 709 F.2d 1250 (9th Cir. 1983).

**36-2110. Operations of licensees — Adjustment of area — Rules.**

— (a) Possession of a valid license issued by the board shall be a prerequisite to acting as an outfitter or guide.

1. No more than one (1) person may operate as an outfitter or guide under one (1) license.

2. The operating area as set forth on the outfitter's license including any attachment thereto shall be the limit of such operations for each licensee, subject to subsection (b) below.

(b) The board may adjust the territorial scope of operations of any licensed outfitter, for reasons of game harvest, where territorial conflict exists, or for the safety of persons utilizing the services of outfitters.

(c) The board shall adopt rules to carry out the provisions of this section.

**History.**

I.C., § 36-2110, as added by 1976, ch. 95, § 2, p. 315; am. 1988, ch. 269, § 9, p. 886; am.

1997, ch. 345, § 5, p. 1028; am. 2010, ch. 38,

§ 1, p. 69.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 38, deleted "between the big game operations of outfit-

ters" following "conflict exists" in subsection (b).

**36-2111. Disposition of funds — Continuing appropriation.** — All fees collected by the board under the provisions of this chapter shall be deposited with the state treasurer in a special fund, which fund is hereby created, and designated as the Idaho outfitters and guides board fund. All moneys deposited in such fund are hereby continually appropriated to the outfitters and guides board for the purpose of conducting all operations of the board.

**History.**

I.C., § 36-2111, as added by 1976, ch. 95, § 2, p. 315.

**36-2112. Licensed outfitters may act as guides.** — Any natural person holding a current and valid outfitter's license may act as a guide without a guide's license if he possesses the qualifications of a guide as determined by the board.

**History.**

I.C., § 36-2112, as added by 1976, ch. 95, § 2, p. 315.

**36-2113. Revocation or suspension of license — Grounds.** — (a) Every license shall, by virtue of this chapter, be subject to suspension, revocation, probation or other restriction by the board for the commission of any of the following acts:

1. For supplying false information or for failure to provide information required to be furnished by the license application form for a license currently valid or for other fraud or deception in procuring a license under the provisions of this chapter.

2. For fraudulent, untruthful or misleading advertising.
3. For conviction of a felony.
4. For two (2) or more forfeitures of any deposits of money or collateral with a court or administrative agency or for a conviction for violation of regulations of the United States forest service or the bureau of land management.
5. For unethical or unprofessional conduct as defined by rules of the board.
6. For conviction of any violation of any state or federal fish and game or outfitting and guiding laws.
7. For a substantial breach of any contract with any person utilizing his services.
8. For willfully (i) operating in any area for which the licensee is not licensed, or (ii) engaging in any activity for which the licensee is not licensed.
9. For the employment of an unlicensed guide by an outfitter.
10. For inhumane treatment of any animal used by the licensed outfitter or guide in the conduct of his business which endangers the health or safety of any guest or patron or which interferes with the conduct of his business.
11. For failure by any firm, partnership, corporation or other organization or any combination thereof licensed as an outfitter to have at least one (1) licensed outfitter as designated agent conducting its outfitting business who meets all of the qualifications and requirements of a licensed outfitter.
12. For the failure to provide any animal used by the licensed outfitter or guide in the conduct of his business with proper food, drink and shelter, or for the subjection of any such animal to needless abuse or cruel and inhumane treatment.
13. For failure of an outfitter to serve the public in any of the following ways: (i) by nonuse of license privileges as defined by rules of the board, (ii) by limiting services to any individual, group, corporation or club that limits its services to a membership, or (iii) by not offering services to the general public.
14. For violation of or noncompliance with any applicable provision of this chapter, or for violation of any lawful rule or order of the outfitters and guides board.
  - (b) For the purposes of this section, the term "conviction" shall mean a finding of guilt, an entry of a guilty plea by a defendant and its acceptance by the court, or a forfeiture of bail bond or collateral deposited to secure a defendant's appearance, suspended sentence, probation or withheld judgment.
  - (c) In addition to the penalties imposed in this section, the board may impose an administrative fine not to exceed five thousand dollars (\$5,000), or the administrative costs of bringing the action before the board including, but not limited to, attorney's fees and costs of hearing transcripts, for each violation of the provisions of this chapter.
  - (d) The jurisdiction and authority of the board pursuant to this section and section 36-2114, Idaho Code, extend to any former licensee for a violation of this section which occurred during the period of licensure.

**History.**

I.C., § 36-2113, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 162, § 4, p. 418; am. 1978, ch. 131, § 5, p. 292; am. 1982, ch. 174, § 3, p. 458; am. 1984, ch. 262, § 2, p. 632; am.

1988, ch. 269, § 10, p. 886; am. 1991, ch. 131, § 3, p. 287; am. 1998, ch. 340, § 1, p. 1087; am. 2000, ch. 102, § 1, p. 226; am. 2003, ch. 205, § 2, p. 546.

**STATUTORY NOTES****Effective Dates.**

Section 5 of S.L. 1977, ch. 162 declared an emergency. Approved March 29, 1977.

Section 4 of S.L. 1991, ch. 131 read: "Sec-

tions 1 and 3 of this act shall be in full force and effect on and after July 1, 1991. Section 2 of this act shall be in full force and effect on and after April 1, 1992."

**36-2114. Revocation or suspension of license — Review of denial of license — Procedure.** — (a) Proceedings for the revocation or suspension of a license issued hereunder may be taken upon information and recommendation of any person. All accusations must be made in writing and signed by a person familiar therewith and submitted to the board. Thereupon, the board, acting as a board, or through its executive director, shall make a preliminary investigation of all facts in connection with such charge. The board in its discretion may either decide to take no further action and the results of such investigation shall be subject to disclosure according to chapter 3, title 9, Idaho Code, or the board may decide to initiate proceedings to suspend or revoke the license of the outfitter or guide against whom a complaint has been filed, in which case the board shall set a time and place for hearing as provided in chapter 52, title 67, Idaho Code. Notice of such hearing shall be given to the licensee against whom a citation or formal complaint has been filed not later than one hundred eighty (180) days after the filing of such citation or formal complaint. If, after full, fair and impartial hearing, the majority of the board shall find the accused has committed the violations alleged, the board may suspend the license for a period not to exceed one (1) year, or the board may order the license revoked. The board shall forthwith suspend or revoke such license in accordance with and pursuant to its order under the procedure established in chapter 52, title 67, Idaho Code.

(b) Any applicant aggrieved by a denial of his application in whole or in part for an outfitter's or guide's license by the board shall have twenty-one (21) days from the day of receiving such notice of denial in which to submit a written request for a hearing before the board to review such action. Upon receipt of such request, the board shall hold a hearing as provided in chapter 52, title 67, Idaho Code.

**History.**

I.C., § 36-2114, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 131, § 6, p. 292; am.

1990, ch. 213, § 30, p. 480; am. 1990, ch. 254, § 3, p. 726; am. 1993, ch. 216, § 18, p. 587; am. 1997, ch. 346, § 1, p. 1031.

**STATUTORY NOTES****Effective Dates.**

Section 111 of S.L. 1990, ch. 213 as amended by § 16, S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of

the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**36-2115. Review of board action.** — Any person aggrieved by any action of the board in denying the issuance of or in the suspension or revocation of an outfitter's or guide's license may proceed as provided in chapter 52, title 67, Idaho Code.

**History.**

I.C., § 36-2115, as added by 1976, ch. 95, § 2, p. 315; am. 1993, ch. 216, § 19, p. 587.

**36-2116. Complaint for violation — Prosecution by county attorney.** — (a) The board or its designated agent may prefer a complaint before any court of competent jurisdiction in the county where the offense occurred, for a violation of: (i) the provisions of subsections (1), (2), (7), (8), or (9) of section 36-2113, Idaho Code; or (ii) any regulation promulgated pursuant to subsection (d) of section 36-2107, Idaho Code.

(b) Any person convicted of any violation enumerated in subsection (a) of section 36-2116, Idaho Code, shall be guilty of a misdemeanor and upon conviction thereof, shall be punished as provided in section 36-2117, Idaho Code. Fifty percent (50%) of all fines and forfeitures collected shall be paid to the outfitters and guides board and such moneys so received by the board shall be deposited with the state treasurer and the state treasurer shall credit the same to the Idaho outfitters and guides board account and fifty percent (50%) of all fines and forfeitures collected shall be distributed in accordance with section 19-4705, Idaho Code.

**History.**

I.C., § 36-2116, as added by 1976, ch. 95, § 3, p. 632.  
§ 2, p. 315; am. 1978, ch. 131, § 7, p. 292; am.

**36-2117. Penalty for violations — Prosecuting attorney to prosecute.** — (1) It shall be the duty of the prosecuting attorney of each county in the state to prosecute, in the county where the violation occurs, any person charged with violating the provisions of section 36-2104 or 36-2116, Idaho Code.

(2) Any person who pleads guilty or is found guilty of a first offense for violating the provisions of section 36-2104, Idaho Code, shall be punished by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, if other than a corporation, or by both such fine and imprisonment in the discretion of the court.

(3) Any person who pleads guilty or is found guilty of a second offense for violating the provisions of section 36-2104, Idaho Code, shall be punished by a fine of not less than two thousand five hundred dollars (\$2,500) nor more than five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, if other than a corporation, or by both such fine and imprisonment in the discretion of the court.

(4) Any person who pleads guilty or is found guilty of a third or subsequent offense for violating the provisions of section 36-2104, Idaho Code, shall be punished by a fine of five thousand dollars (\$5,000), or by imprisonment in the county jail for a term not to exceed one (1) year, if other

than a corporation, or by both such fine and imprisonment in the discretion of the court.

(5) Any person who pleads guilty or is found guilty of a violation of section 36-2116, Idaho Code, shall be guilty of a misdemeanor.

(6) All fines and penalties collected for violation of this section, under sentence or judgment of any court, shall be paid over by such court in the same manner as provided for in section 36-2116, Idaho Code. Such court shall also send to the Idaho outfitters and guides board a statement setting forth the title of the court and of the cause for which such moneys were collected, the name and residence of the defendant or defendants, the nature of the offense or offenses and the fine and the sentence or judgment imposed and such moneys so received by the board shall be deposited with the state treasurer and the state treasurer shall credit the same to the Idaho outfitters and guides board account in the dedicated fund. The court shall require any person violating the provisions of section 36-2104, Idaho Code, to reimburse the Idaho outfitters and guides licensing board or other city, county, state or federal agency for the employee costs and other costs incurred by the board or agency in the investigation and criminal prosecution of acts for violations of section 36-2104, Idaho Code.

(7) Any person who pleads guilty or is found guilty of violating the provisions of section 36-2104, Idaho Code, may, in the discretion of the court, have their license to hunt or take big game, or to fish, suspended for a period of time as determined by the court.

#### History.

I.C., § 36-2117, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 131, § 8, p. 292; am.

1982, ch. 174, § 5, p. 458; am. 1984, ch. 262, § 4, p. 632; am. 1988, ch. 269, § 11, p. 886; am. 2008, ch. 112, § 3, p. 316.

#### STATUTORY NOTES

##### Amendments.

The 2008 amendment, by ch. 112, redesignated former subsection (a) and the first sentence in former subsection (b) as present subsections (1) and (2); in subsection (2), substituted "person who pleads guilty or is found guilty of a first offense" for "person convicted," "section 36-2104, Idaho Code" for "this chapter," "one thousand dollars (\$1,000)" for "one hundred dollars (\$100)," and "one (1) year" for "ninety (90) days"; added subsections (3) through (5); designated the last two sentences in former subsection (b) as subsec-

tion (6) and therein added the last sentence; and added subsection (7).

##### Effective Dates.

Section 1 of S.L. 1978, ch. 188 read: "An emergency existing therefor, which emergency is hereby declared to exist, the provisions of House Bill No. 504 [ch. 131], Second Regular Session, Forty-fourth Idaho Legislature, shall be in full force and effect on and after its passage and approval." Approved March 23, 1978.

Section 2 of S.L. 1978, ch. 188 declared an emergency. Approved March 23, 1978.

**36-2117A. Civil penalty for violations.** — (a) The board or its designated agent may commence and prosecute in district court a civil enforcement action, including obtaining injunctive relief, against any person who is alleged to have violated this chapter or any rule promulgated pursuant to this chapter. The board shall not be required to initiate or prosecute an administrative action before commencing and prosecuting a civil action.

(b) No civil proceeding may be brought to recover for a violation of this chapter or any rule promulgated pursuant to this chapter more than two (2)

years from the later of: the date the violation occurred or the date of the criminal conviction pursuant to section 36-2113, Idaho Code.

(c) The civil penalty for violation of the provisions of this chapter or any rule promulgated pursuant to this chapter shall not exceed five thousand dollars (\$5,000) for each separate violation.

(d) Any person who is found to have violated any provision of this chapter or any rule promulgated pursuant to this chapter shall be assessed the board's costs, including the reasonable value of attorneys' services, for preparing and litigating the case.

(e) Fifty percent (50%) of all moneys collected under this section shall be deposited with the state treasurer, and the state treasurer shall credit the same to the Idaho outfitters and guides board fund, and fifty percent (50%) of the moneys shall go to the general fund in the state operating fund.

**History.**

I.C., § 36-2117A, as added by 1984, ch. 262, § 5, p. 632; am. 1988, ch. 269, § 12, p. 886;

am. 2003, ch. 205, § 3, p. 546.

**36-2118. License a prerequisite for recovery of compensation. —** No person engaged in the business, or acting in the capacity, of an outfitter or guide, as defined in this chapter, within this state shall bring or maintain any action in the courts of this state for the collection of compensation for the performance of any services as such outfitter or guide, without alleging and proving that such person, partnership, or corporation was a duly licensed outfitter or guide at the time the alleged cause of action arose.

**History.**

I.C., § 36-2118, as added by 1976, ch. 95, § 2, p. 315.

#### STATUTORY NOTES

**Compiler's Notes.**

Section 3 of S.L. 1976, ch. 95, read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for

any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.**

Section 5 of S.L. 1976, ch. 95 provided that the act should be in full force and effect on and after January 1, 1977.

**36-2119. Board orders and rules. —** (a) All rules and orders adopted pursuant to the provisions of this chapter shall be made in accordance with chapter 52, title 67, Idaho Code.

(b) All rules and orders made as herein provided shall have full force and effect as law and any person violating any such rule or order of the board, adopted and published as herein set forth, shall be guilty of a misdemeanor.

**History.**

I.C., § 36-2119, as added by 1988, ch. 269, § 13, p. 886; am. 1997, ch. 345, § 6, p. 1028.

**36-2120. Idaho, Oregon and Washington boundary waters — Snake River — Reciprocity. [Null and void.]**

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 1993, ch. 260 provided: "This act shall be null, void and of no force and effect on and after July 1, 1995."

**CHAPTER 22**  
**SHOOTING PRESERVES**

**SECTION.**

- 36-2201. Purpose.
- 36-2202. Shooting preserve license.
- 36-2203. Standards.
- 36-2204. Boundaries.
- 36-2205. Game birds.
- 36-2206. Fees.
- 36-2207. License to shoot in a preserve.
- 36-2208. Limitation on taking.
- 36-2209. Shooting season.

**SECTION.**

- 36-2210. Birds taken outside boundaries.
- 36-2211. Care of birds.
- 36-2212. Transfer of license.
- 36-2213. Registration book.
- 36-2214. Prohibitions.
- 36-2215. Revocation, suspension and nonrenewal.
- 36-2216. Penalty. [Repealed.]

**36-2201. Purpose.** — It is the intent of the legislature by this act to provide for and control the establishment and operation of shooting preserves and to do so in such a manner as to be in the best public interest. Pursuant thereto the director of the Idaho fish and game department is hereby authorized to issue shooting preserve licenses for the purpose of permitting shooting of privately owned upland game birds on privately owned premises as hereinafter provided.

Further, the Idaho fish and game commission is hereby authorized to make rules and proclamations consistent with and for the purpose of carrying out, administering and enforcing the provisions of this act. During the shooting preserve season, the hunting and shooting of upland game birds on such preserves shall be open to any holder of a valid license of the proper class following payment of the required shooting fee established by the licensed shooting preserve operator.

**History.**

I.C., § 36-2201, as added by 1977, ch. 324, § 1, p. 905; am. 1998, ch. 170, § 14, p. 567.

**STATUTORY NOTES**

**Cross References.**

Director of fish and game department, § 36-106.  
Idaho fish and game commission, § 36-102.

**Compiler's Notes.**

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**36-2202. Shooting preserve license.** — Upon receipt of a completed application of a type and form prescribed by the director, his representative shall inspect the proposed shooting preserve premises and facilities where such upland game birds are to be propagated, raised and released. If the department finds that the proposed operation and area meet all of the

requirements of law and related rules and proclamations adopted by the fish and game commission, the application shall be approved and the license issued. Upon payment of the annual fee as provided in this act, shooting preserve licenses issued under the provisions hereof shall be and continue in force from the date of issuance until and including the thirtieth day of June thereafter. Application for renewal thereof must be made during the thirty (30) days immediately preceding said expiration date.

Operating licenses or permits may be issued to any person, partnership, association or corporation for the operation of shooting preserves that meet the requirements herein prescribed.

**History.**

I.C., § 36-2202, as added by 1977, ch. 324, § 1, p. 905; am. 1998, ch. 170, § 15, p. 567.

**STATUTORY NOTES****Cross References.**

Idaho fish and game commission, § 36-102.

**Compiler's Notes.**

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**36-2203. Standards.** — (a) Each shooting preserve shall contain a minimum of one hundred sixty (160) acres in any tract of land (including water area, if any) and shall be restricted to not more than one thousand six hundred (1,600) acres (including water area, if any) in the event the land is leased by the licensee or four thousand (4,000) acres (including water area, if any) in the event the land is owned by the licensee. Tracts included in the preserve do not need to be contiguous. A licensee shall be granted only one (1) shooting preserve license. Multiple licenses shall not be used to circumvent the maximum acreage restriction.

(b) The tract or tracts of land concerned must be owned or leased by the licensee; must be adaptable to use as a game breeding and/or controlled shooting area; must not encompass any public land or limit any existing access to public land; must be of such nature that the game birds propagated and/or released thereon are not likely to become diseased and a menace to other wildlife; and the operation of a shooting preserve must be of such a nature as to not likely work a fraud upon persons paying a fee to hunt thereon.

(c) No license shall be granted for any shooting preserve, any portion of which is within one (1) mile of any state or federal park, wilderness area, refuge or wildlife management area operated by the state or federal government unless the commission finds that:

1. The state or federal park, wilderness area, refuge or wildlife management area is less than one hundred sixty (160) acres in size;
2. The state or federal park, wilderness area, refuge or wildlife management area is open to public hunting; and
3. Licensing the proposed shooting preserve will not affect the management of the state or federal park, wilderness area, refuge or wildlife management area.

(d) Any person who, on June 30, 2005, holds a license for the operation of a shooting preserve pursuant to the provisions of this chapter, shall be accorded "grandfather rights," and are therefore exempt from the prohibition against the tract or tracts of land constituting a preserve encompassing any public land or limiting any existing access to public land as provided for by this act. Notwithstanding the expansion of any preserve on or after July 1, 2005, this exemption shall apply only to the tract or tracts of land constituting the licensed preserve on June 30, 2005. "Grandfather rights" shall be deemed to have been abandoned by any such license holder that fails to obtain a shooting preserve license renewal on an ongoing annual basis.

**History.**

I.C., § 36-2203, as added by 1977, ch. 324, § 1, p. 905; am. 1988, ch. 204, § 1, p. 384; am.

1990, ch. 250, § 1, p. 719; am. 1997, ch. 349,

§ 1, p. 1035; am. 2005, ch. 368, § 1, p. 1168.

**STATUTORY NOTES****Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

of the first sentence in subsection (d), mean S.L. 2005, ch. 368, which is compiled as this section.

The words "this act", referred to at the end

**36-2204. Boundaries.** — The exterior boundaries of such shooting preserve shall be clearly defined and posted with appropriate signs erected around the perimeter at intervals of one hundred fifty (150) feet or less if unfenced unless specified otherwise by commission rule. If the boundary of the shooting preserve is fenced, such signs must be posted at intervals of not more than five hundred (500) feet unless specified otherwise by commission rule.

**History.**

I.C., § 36-2204, as added by 1977, ch. 324, § 1, p. 905; am. 2004, ch. 18, § 1, p. 20.

**36-2205. Game birds.** — (a) Game which may be hunted under this act shall be confined to artificially propagated upland game birds.

(b) A minimum release of two hundred (200) upland game birds of each species to be hunted on each shooting preserve must be made on the licensed area during the shooting preserve season.

(c) Artificially propagated upland game birds released on a shooting preserve must be:

(1) Marked by clipping the terminal joint of a single toe on either foot as evidenced by a healed scar; or

(2) Banded with a leg band of a type not removable without breaking or mutilating, such tag to be supplied by the fish and game department at cost. One (1) such band shall be securely affixed to one (1) leg of each bird released and shall remain affixed on the bird until the bird is prepared for consumption; or

(3) Marked in a manner specified by commission rule.

(d) Any wild upland game bird incidentally taken upon a shooting preserve, at any time other than the general open season therefor, must be

marked then and there with a tag that has been issued to the shooting preserve licensee by the Idaho fish and game department. Said bird shall count as part of the permittee's shooting preserve limit. The fee for such tags shall be as specified in section 36-416, Idaho Code, per bird.

During the general hunting season for the taking of upland game birds, all wild birds harvested on shooting preserves will be subject to the laws applicable to such wild birds and related rules and proclamations of the Idaho fish and game commission.

**History.**

I.C., § 36-2205, as added by 1977, ch. 324, § 1, p. 905; am. 1990, ch. 281, § 1, p. 787; am.

1998, ch. 170, § 16, p. 567; am. 2000, ch. 211,

§ 32, p. 538; am. 2004, ch. 18, § 2, p. 20.

**STATUTORY NOTES****Cross References.**

Department of fish and game, § 36-101 et seq.

Idaho fish and game commission, § 36-102 et seq.

**Compiler's Notes.**

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-2206. Fees.** — Fees for shooting preserve permits shall be the fee as specified in section 36-416, Idaho Code, per year.

**History.**

I.C., § 36-2206, as added by 1977, ch. 324, § 1, p. 905; am. 2000, ch. 211, § 33, p. 538.

**STATUTORY NOTES****Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be

in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-2207. License to shoot in a preserve.** — Every person taking game birds upon a shooting preserve must secure an appropriate hunting license of the proper class authorizing the hunting of upland game birds or a license entitling the person to whom issued to hunt upland game birds on a licensed shooting preserve only. A license of this kind may be had by any person upon payment of the fee as specified in section 36-416, Idaho Code.

**History.**

I.C., § 36-2207, as added by 1977, ch. 324, § 1, p. 905; am. 2000, ch. 211, § 34, p. 538.

**STATUTORY NOTES****Effective Dates.**

Section 35 of S.L. 2000, ch. 211 declared an emergency and provided that the act shall be

in full force and effect on and after May 1, 2000. Approved April 5, 2000.

**36-2208. Limitation on taking.** — Artificially propagated upland

game birds released on licensed shooting preserves may be taken during the shooting season provided in this act but the total number taken on any shooting preserve during any such season shall not exceed eighty-five per cent (85%) of the total number of the individual species of said birds released thereon during the license year. Provided, however that, in addition to the authorized taking of upland game birds, one hundred per cent (100%) of exotic species not established and classified as game birds in this state may also be taken under the provisions of this act. Shooting preserve operators may provide their own shooting limitations and restrictions as to the sex and number of those species that may be taken by shooting preserve hunters. All birds released under this act shall be at last [least] fourteen (14) weeks of age before liberation and must possess full plumage.

**History.**

I.C., § 36-2208, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed word "least" in the last sentence of this section was inserted by the compiler to supply the probable intended word.

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**36-2209. Shooting season.** — The season for shooting in any manner and for any purpose on licensed game preserves shall be from August 15 to April 15, inclusive. Shooting hours shall be the same as established for wild upland game birds by the Idaho fish and game commission.

**History.**

I.C., § 36-2209, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Cross References.**

Idaho fish and game commission, § 36-102  
et seq.

**36-2210. Birds taken outside boundaries.** — The taking or shooting of any and all artificially propagated and marked upland game birds that leave the shooting preserve area shall be subject to related provisions of the law and the rules and proclamations of the Idaho fish and game commission, notwithstanding the fact of leg bands attached to said birds.

**History.**

I.C., § 36-2210, as added by 1977, ch. 324,  
§ 1, p. 905; am. 1998, ch. 170, § 17, p. 567.

**STATUTORY NOTES****Cross References.**

Idaho fish and game commission, § 36-102  
et seq.

**36-2211. Care of birds.** — All permittees shall conform to the requirements of the fish and game commission with respect to the care of and sanitary provisions for such birds on licensed premises, or on any licensed game farm premises where such birds are being reared or otherwise held. Upland game birds and exotic game birds not so classified which are shipped into this state from another state may only be released following approval by the director of the fish and game department or his authorized representative.

**History.**

I.C., § 36-2211, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Cross References.**

Idaho fish and game commission, § 36-102  
Director of fish and game department, et seq.  
§ 36-106.

**36-2212. Transfer of license.** — Upon application to the director of the Idaho fish and game department and a determination being made by him that the provisions of this act will be met and complied with by the transferee, any shooting preserve license may be transferred to another person or to another location upon sale of the real property concerned.

**History.**

I.C., § 36-2212, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Cross References.**

Director of Idaho fish and game department, § 36-106.

**Compiler's Notes.**

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**36-2213. Registration book.** — Each shooting preserve operator shall maintain a registration book listing the names, addresses and hunting license numbers of all shooters; the date on which they hunted; the amount of game taken, by sex and species; and the band numbers affixed to each carcass so taken. An accurate record likewise must be maintained of the total number, by sex and species, of game received and/or purchased and the date and number, by sex, of all species released. These records shall be open to inspection by an authorized representative of the Idaho fish and game department at any reasonable time.

**History.**

I.C., § 36-2213, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Cross References.**

Fish and game department, § 36-102 et seq.

**36-2214. Prohibitions.** — Only dead birds which have been killed by shooting and which have been properly tagged shall be removed from the premises licensed under this act, and it shall be unlawful for any person to thereafter sell or attempt to sell or to buy or attempt to buy any such birds.

**History.**

I.C., § 36-2214, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**36-2215. Revocation, suspension and nonrenewal.** — The director of the Idaho fish and game department may either refuse to issue or refuse to renew or may suspend or may revoke any shooting preserve license if the said director finds that such licensed shooting preserve or the operator thereof does not meet, or is not complying with the provisions of this act or rules adopted hereunder, or if such property or areas are otherwise being operated in any unlawful or illegal manner.

**History.**

I.C., § 36-2215, as added by 1977, ch. 324,  
§ 1, p. 905.

**STATUTORY NOTES****Cross References.**

Director of Idaho fish and game department, § 36-106.

**Compiler's Notes.**

The words "this act" refer to S.L. 1977, ch. 324, compiled as §§ 36-2201 to 36-2215.

**36-2216. Penalty. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 36-

2216, as added by 1977, ch. 324, § 1, p. 905, was repealed by S.L. 1992, ch. 81, § 39.

## CHAPTER 23

### WILDLIFE VIOLATOR COMPACT

## SECTION.

36-2301. Wildlife violator compact — Executive.

36-2302. Form and content.

## SECTION.

36-2303. Board of compact administrators — Member.

**36-2301. Wildlife violator compact — Execution.** — The governor of the state of Idaho is authorized to execute a compact on behalf of this state with any other state or states for the purpose of cooperating with those states for the promotion of interstate cooperation in connection with the enforcement of wildlife laws.

**History.**

I.C., § 36-2301, as added by 1990, ch. 364, § 1, p. 988.

**36-2302. Form and content.** — The form and content of the compact shall be substantially as provided in this section, and the effect of its provisions shall be interpreted and administered in conformity with the provisions of this section:

#### The Wildlife Violator Compact

The contracting states do hereby agree as follows:

#### Article I

##### Findings, Declaration of Policy and Purpose

(a) The participating states find that:

1. Wildlife resources are managed in trust by the respective states for the benefit of all residents and visitors.
2. The protection of the wildlife resources of a state is materially affected by the degree of compliance with state statutes, laws, regulations, ordinances or administrative rules relating to the management of those resources.
3. The preservation, protection, management and restoration of wildlife contributes immeasurably to the aesthetic, recreational and economic aspects of these natural resources.
4. Wildlife resources are valuable without regard to political boundaries; therefore, every person should be required to comply with wildlife preservation, protection, management and restoration laws, ordinances and administrative rules and regulations of all participating states as a condition precedent to the continuance or issuance of any license to hunt, fish, trap or possess wildlife.
5. Violation of wildlife laws interferes with the management of wildlife resources and may endanger the safety of persons and property.
6. The mobility of many wildlife law violators necessitates the maintenance of channels of communications among the various states.

7. In most instances, a person who is cited for a wildlife violation in a state other than the person's home state:
  - (A) Must post collateral or bond to secure appearance for a trial at a later date; or
  - (B) If unable to post collateral or bond, is taken into custody until the collateral or bond is posted; or
  - (C) Is taken directly to court for an immediate appearance.
8. The purpose of the enforcement practices described in paragraph 7. of this article is to ensure compliance with the terms of a wildlife citation by the person who, if permitted to continue on the person's way after receiving the citation, could return to the person's home state and disregard the person's duty under the terms of the citation.
9. In most instances, a person receiving a wildlife citation in the person's home state is permitted to accept the citation from the officer at the scene of the violation and to immediately continue on the person's way after agreeing or being instructed to comply with the terms of the citation.
10. The practice described in paragraph 7. of this article causes unnecessary inconvenience and, at times, a hardship for the person who is unable at the time to post collateral, furnish a bond, stand trial or pay the fine, and thus is compelled to remain in custody until some alternative arrangement can be made.
11. The enforcement practices described in paragraph 7. of this article consume an undue amount of law enforcement time.
  - (b) It is the policy of the participating states to:
    1. Promote compliance with the statutes, laws, ordinances, regulations and administrative rules relating to management of wildlife resources in their respective states.
    2. Recognize the suspension of license privileges of any person whose license privileges have been suspended by a participating state and treat this suspension as though it had occurred in their respective states.
    3. Allow violators to accept a wildlife citation, except as provided in paragraph (b) of article III, and proceed on the person's way without delay whether or not the person is a resident in the state in which the citation was issued, provided that the person's home state is party to this compact.
    4. Report to the appropriate participating state, as provided in the compact manual, any conviction recorded against any person whose home state was not the issuing state.
    5. Allow the home state to recognize and treat convictions recorded for its residents, which convictions occurred in another participating state as if they had occurred in the home state.
    6. Extend cooperation to its fullest extent among the participating states for enforcing compliance with the terms of a wildlife citation issued in one (1) participating state to a resident of another participating state.
    7. Maximize effective use of law enforcement personnel and information.
    8. Assist court systems in the efficient disposition of wildlife violations.
  - (c) The purpose of this compact is to:
    1. Provide a means through which the participating states may participate in a reciprocal program to effectuate the policies set forth in paragraph (b) of this article in a uniform and orderly manner.

2. Provide for the fair and impartial treatment of persons committing wildlife violations in participating states, in recognition of the person's right of due process and the sovereign status of a participating state.

## Article II

### Definitions

As used in this compact, unless the context requires otherwise:

(a) "Citation" means any summons, complaint, ticket, penalty assessment or other official document issued by a wildlife officer or other peace officer to any person for a wildlife violation which contains an order requiring the person to respond.

(b) "Collateral" means any cash or other security deposited to secure an appearance for trial in connection with the issuance of a wildlife officer or other peace officer of a citation for a wildlife violation.

(c) "Compliance" with respect to a citation means the act of answering the citation through appearance at a court, a tribunal or payment of fines, costs and surcharges, if any, or both such appearance and payment.

(d) "Conviction" means a conviction, including any court conviction, of any offense related to the preservation, protection, management or restoration of wildlife which is prohibited by state statute, law, regulation, ordinance or administrative rule, or a plea of nolo contendere, or the imposition of a withheld judgment, a deferred or suspended sentence by the court or a forfeiture of bail, bond or other security deposited to secure appearance by a person charged with having committed any such offense, or payment of a penalty assessment.

(e) "Court" means a court of law, including magistrate's court and the justice of the peace court.

(f) "Home state" means the state of primary residence of a person.

(g) "Issuing state" means the participating state which issues a wildlife citation to the person.

(h) "License" means any license, permit, tag, stamp or other public document which conveys to the person to whom it was issued the privilege of pursuing, possessing or taking any wildlife regulated by statute, law, regulation, ordinance or administrative rule of a participating state.

(i) "Licensing authority" means the department or division within each participating state which is authorized by law to issue or approve licenses, permits, tags or stamps to hunt, fish, trap, or possess wildlife.

(j) "Participating state" means any state which enacts legislation to become a member of this wildlife compact.

(k) "Personal recognizance" means an agreement by a person made at the time of issuance of the wildlife citation that the person will comply with the terms of that citation.

(l) "Primary residence" means a place of permanent domicile or residence, and to which, when the person is temporarily absent, the person intends to return.

(m) "State" means any state, territory or possession of the United States, the District of Columbia, Commonwealth of Puerto Rico, Provinces of Canada and other countries.

(n) "Suspension" means any suspension, revocation, denial or withdrawal of any or all license privileges, including the privilege to apply for, purchase or exercise the benefits conferred by any license.

(o) "Terms of the citation" means those conditions and options expressly stated upon the citation.

(p) "Wildlife" means all species of animals including, but not limited to, mammals, birds, fish, reptiles, amphibians, mollusks and crustaceans, which are defined as "wildlife" and are protected or otherwise regulated by statute, law, regulation, ordinance or administrative rule in a participating state. Species included in the definition of "wildlife" vary from state to state and determination of whether a species is "wildlife" for the purposes of this compact shall be based on the law of the issuing state.

(q) "Wildlife law" means any statute, law, regulation, ordinance or administrative rule developed and enacted for the management of wildlife resources and the uses thereof.

(r) "Wildlife officer" means any individual authorized by a participating state to issue a citation for a wildlife violation.

(s) "Wildlife violation" means any cited violation of a statute, law, regulation, ordinance or administrative rule developed and enacted for the management of wildlife resources and the use thereof.

### Article III

#### Procedures for Issuing State

(a) When issuing a citation for a wildlife violation, a wildlife officer shall issue a citation to any person whose primary residence is in a participating state in the same manner as though the person were a resident of the issuing state and shall not require the person to post collateral to secure appearance, subject to the exceptions noted in paragraph (b) of this article, if the officer receives the recognizance of the person that the person will comply with the terms of the citation.

(b) Personal recognizance is acceptable:

1. If not prohibited by local law or the compact manual; and
2. If the violator provides adequate proof of the violator's identification to the wildlife officer.

(c) Upon conviction or failure of a person to comply with the terms of a wildlife citation, the appropriate official shall report the conviction or failure to comply to the licensing authority of the participating state in which the wildlife citation was issued. The report shall be made in accordance with the procedures specified by the issuing state and shall contain the information specified in the compact manual as minimum requirements for effective processing by the home state.

(d) Upon receipt of the report of conviction or noncompliance required by paragraph (c) of this article, the licensing authority of the issuing state shall transmit to the licensing authority in the home state the information in a form and content prescribed by the compact manual.

### Article IV

#### Procedures for Home State

- (a) Upon receipt of a report of failure to comply with the terms of a

citation from the licensing authority of the issuing state, the licensing authority of the home state shall notify the violator and shall initiate a suspension action in accordance with the home state's suspension procedures and shall suspend the violator's license privileges until satisfactory evidence of compliance with the terms of the wildlife citation has been furnished by the issuing state to the home state licensing authority. Due process safeguards shall be accorded.

(b) Upon receipt of a report of conviction from the licensing authority of the issuing state, the licensing authority of the home state shall enter such conviction in its records and shall treat such conviction as though it occurred in the home state for the purposes of the suspension of license privileges.

(c) The licensing authority of the home state shall maintain a record of actions taken and make reports to issuing states as provided in the compact manual.

## Article V

### Reciprocal Recognition of Suspension

(a) All participating states shall recognize the suspension of license privileges of any person by any state as if the violation on which the suspension is based had in fact occurred in their state and could have been the basis for suspension of license privileges in their state.

(b) Each participating state shall communicate suspension information to other participating states in form and content as prescribed by the compact manual.

## Article VI

### Applicability of Other Laws

Except as expressly required by the provisions of this compact, nothing herein shall be construed to affect the right of any participating state to apply any of its laws relating to license privileges to any person or circumstance, or to invalidate or prevent any agreement or other cooperative arrangements between a participating state and a nonparticipating state concerning wildlife law enforcement.

## Article VII

### Compact Administrator Procedures

(a) For the purpose of administering the provisions of this compact and to serve as a governing body for the resolution of all matters relating to the operation of this compact, a board of compact administrators is established. The board shall be composed of one (1) representative from each of the participating states to be known as the compact administrator. The compact administrator shall be appointed by the head of the licensing authority of each participating state and will serve and be subject to removal in accordance with the laws of the state the administrator represents. A

compact administrator may provide for the discharge of the administrator's duties and the performance of the administrator's functions as a board member by an alternate. An alternate shall not be entitled to serve unless written notification of the alternate's identity has been given to the board.

(b) Each member of the board of compact administrators shall be entitled to one (1) vote. No action of the board shall be binding unless taken at a meeting at which a majority of the total number of the board's votes are cast in favor of the action. The board may take action only at meetings at which a majority of the participating states are represented.

(c) The board shall elect annually, from its membership, a chairperson and vice-chairperson.

(d) The board shall adopt bylaws, not inconsistent with the provisions of this compact or the laws of a participating state for the conduct of its business and shall have the power to amend and rescind its bylaws.

(e) The board may accept for any of its purposes and functions under this compact any and all donations and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the federal government or any governmental agency, and may receive, utilize and dispose of the same.

(f) The board may contract with or accept services or personnel from any governmental or intergovernmental agency, individual, firm, partnership, corporation or any private nonprofit organization or institution.

(g) The board shall formulate all necessary procedures and develop uniform forms and documents for administering the provisions of this compact. All procedures and forms adopted pursuant to board action shall be contained in the compact manual.

## Article VIII

### Entry Into Compact and Withdrawal

(a) This compact shall become effective when it has been adopted in substantially similar form by at least two (2) states.

(b) Entry into the compact shall be made by resolution of ratification executed by the authorized officials of the applying state and submitted to the chairperson of the board. The resolution shall be substantially in the form and content as set forth in the compact manual and shall include the following:

1. A statement of the authority by which the state is empowered to become a party to this compact;
2. Agreement to comply with the terms and provisions of the compact; and
3. That compact entry is with all states then participating in the compact and with any state subsequently becoming a participant in the compact.
4. The effective date of entry shall be specified by the applying state, but shall not be less than sixty (60) days after notice has been given by the chairperson of the board of the compact administrators or by the secretariat of the board to each participating state that the resolution from the applying state has been received.

(c) A participating state may withdraw from this compact by official written notice to each of the other participating states, but a withdrawal shall not take effect until ninety (90) days after notice of withdrawal is given. The notice shall be directed to the compact administrator of each member state. No withdrawal shall affect the validity of this compact as to the remaining participating states.

## Article IX

### Amendments to the Compact

(a) This compact may be amended from time to time. Amendments shall be presented in resolution form to the chairperson of the board of compact administrators and may be initiated by one (1) or more participating states.

(b) Adoption of an amendment shall require endorsement by all participating states and shall become effective thirty (30) days after the date of the last endorsement.

(c) Failure of a participating state to respond to the compact chairman within one hundred twenty (120) days after receipt of the proposed amendment shall constitute endorsement of the amendment.

## Article X

### Construction and Severability

This compact shall be liberally construed so as to effectuate the purposes stated herein. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States, or the applicability thereof to any government, agency, individual, or circumstance is held to be invalid, the remainder of the compact shall not be affected thereby. If this compact shall be held to be contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

#### History.

I.C., § 36-2302, as added by 1990, ch. 364,  
§ 1, p. 988.

## STATUTORY NOTES

#### Compiler's Notes.

For further information on the Wildlife Vi-  
olator Compact, see <http://>

[fishgame.idaho.gov/cms/about/enforcement/  
violator.cfm](http://fishgame.idaho.gov/cms/about/enforcement/violator.cfm).

**36-2303. Board of compact administrators — Member.** — In furtherance of the provisions contained in the compact, there shall be one (1) member of the board from the state of Idaho who shall be the director or other officer of the Idaho department of fish and game charged with directing the enforcement activities of the department.

**History.**

I.C., § 36-2303, as added by 1990, ch. 364,  
§ 1, p. 988.

**STATUTORY NOTES****Cross References.**

Director of Idaho department of fish and game, § 36-106.

**CHAPTER 24**  
**SPECIES CONSERVATION****SECTION.**

- 36-2401. Definitions.  
36-2402. Delisting advisory team — Duties — Membership.  
36-2403. Operations of delisting advisory team.

**SECTION.**

- 36-2404. State delisting management plan requirements.  
36-2405. Recommendation on management plans.

**36-2401. Definitions.** — As used in this title, the following terms have the following meanings unless the context indicates otherwise:

(1) "Best scientific and commercial data available" means that where this chapter requires the use of the best scientific and commercial data available, the state, when evaluating comparable data, shall give greater weight to scientific or commercial data that is empirical or has been field tested or peer reviewed.

(2) "Candidate conservation agreements" means agreements, entered into with the fish and wildlife service or the national marine fisheries service (services), to implement mutually agreed upon conservation measures for a proposed or candidate species, or a species likely to become a candidate or proposed candidate in the near future, that include assurances from the services that additional conservation measures above and beyond those contained in the agreement will not be required, and that additional land, water or resource use restrictions will not be imposed upon them should the species become listed in the future.

(3) "Candidate species" means a species for which the secretary of interior or secretary of commerce has on file sufficient information on biological vulnerability and threats to support a proposal to list the species as an endangered species or a threatened species, but for which listing is precluded because of pending proposals to list species that are of a higher priority.

(4) "Endangered species" means those species listed as endangered pursuant to 16 U.S.C. section 1532(6).

(5) "Habitat conservation plan" means a plan submitted pursuant to a permit as provided in 16 U.S.C. section 1539, et seq.

(6) "Listed species" means threatened or endangered species.

(7) "Rare and declining species" means those species in need of additional management consideration due to natural rarity, downward trends in populations and habitats, or other factors, natural or human, that, without additional management, might be listed as threatened or endangered species under the ESA in the future.

(8) "Recovery plans" means federal plans or conservation programs, referenced in 16 U.S.C. section 1533(f), that set forth the actions designed to assure the continued survival and recovery of the species listed as "endangered" or "threatened" pursuant to the endangered species act.

(9) "Species conservation assessment" means a state analysis, based on the best scientific and commercial data available, about the status of a rare or declining species throughout its range which describes current and anticipated factors limiting the viability of the species as it relates to desired goals and objectives and identifies specific research needs relative to the species.

(10) "Species conservation strategy" means a state strategic plan for the management or conservation of a rare or declining species that describes the species needs in terms of habitat needs, population size, distribution and connectivity. The strategy shall include voluntary, landowner-based incentives and measures to achieve the management or conservation goals.

(11) "Species management plan" means a plan which provides for the consideration and management of a species upon its being delisted.

(12) "State conservation programs" means the programs developed, pursuant to 16 U.S.C. section 1535(c), for the conservation of endangered species and threatened species.

(13) "Threatened species" means those species listed as threatened pursuant to 16 U.S.C. section 1532(20).

#### **History.**

I.C., § 36-2401, as added by 2000, ch. 270,  
§ 2, p. 770.

#### **STATUTORY NOTES**

##### **Federal References.**

As to United States fish and wildlife service, see 18 USCS § 742a et seq and [http://www.fws.gov/help/about\\_us.html](http://www.fws.gov/help/about_us.html).

ESA, referred to in subsection (7), is the endangered species act, codified as 16 USCS § 1531 et seq. See also, subsection (8) of this section.

##### **Compiler's Notes.**

For further information on the national

marine fisheries service, see <http://www.nmfs.noaa.gov/aboutus.htm>.

The word "services" enclosed in parentheses so appeared in the law as enacted.

##### **Effective Dates.**

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

#### **36-2402. Delisting advisory team — Duties — Membership. —**

(1) The director of the department of fish and game for animal species and plant species, in cooperation and consultation with the governor's office of species conservation, may establish a delisting advisory team (DAT) of no more than nine (9) members for a threatened species or endangered species, to recommend an appropriate state species management plan for a listed species in response to a notification from the secretary of interior or secretary of commerce of intent to delist the species or sooner if deemed appropriate.

(2) The delisting advisory team members shall be broadly representative of the constituencies with an interest in the species and its management or conservation and in the economic or social impacts of management or

conservation including, where appropriate, depending on the specific species, representatives of tribal governments, local governments, academic institutions, private individuals and organizations and commercial enterprises. The delisting advisory team members shall be selected based upon:

- (a) Their knowledge of the species;
- (b) Their knowledge and expertise in the potential conflicts between a species' habitat requirements or management and human activities;
- (c) Their knowledge and expertise in the interests that may be affected by species management or conservation; or
- (d) Other factors that may provide knowledge, information, or data that will further the intent of this act.

**History.**

I.C., § 36-2402, as added by 2000, ch. 270,  
§ 2, p. 770; am. 2003, ch. 129, § 2, p. 379.

**STATUTORY NOTES****Cross References.**

Office of species conservation, § 67-818.

**Compiler's Notes.**

For Idaho governor's office of species conservation, see <http://species.idaho.gov>.

The words "this act", in subdivision (2)(d), refer to §§ 36-2401 to 36-2404, 67-818 and 67-819.

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

**36-2403. Operations of delisting advisory team.** — (1) The delisting advisory team shall elect a team leader who shall chair all meetings of the team and otherwise administer its operations. The team shall meet as necessary, but shall meet no less than once every six (6) months.

(2) Members of the team not in the employ of public agencies may be compensated as provided in section 59-509(b), Idaho Code, from the budget of the governor's office of species conservation. Their department or division shall compensate its members of the team who are state employees.

**History.**

I.C., § 36-2403, as added by 2000, ch. 270,  
§ 2, p. 770.

**STATUTORY NOTES****Cross References.**

Office of species conservation, § 67-818.

**Effective Dates.**

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

**36-2404. State delisting management plan requirements.** —

(1) The delisting advisory team shall develop a state management plan for a species in response to all notification of intent to delist the species by the secretary of interior or secretary of commerce or sooner if deemed appropriate. The state management plan shall provide for the management and

conservation of the species once it is delisted, and contain sufficient safeguards to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho.

(2) The department of fish and game shall provide the delisting advisory teams, the informational, technical or other needs and requirements of those teams in the performance of their duties.

(3) In developing state delisting management plans, the delisting advisory team shall consult with the appropriate state agencies, commissions and boards. The appropriate state agency for wildlife biological and species management issues, and for plant life biological and species management issues is the department of fish and game. The appropriate state agency for timber harvest activities, oil and gas exploration activities and for mining activities is the department of lands. The appropriate state agencies for agricultural activities are the department of agriculture and the Idaho state soil and water conservation commission. The appropriate state agency for public road construction is the transportation department. The appropriate state agency for water rights is the department of water resources. The appropriate state agency for water quality is the department of environmental quality. The appropriate state agency for outfitting and guiding activities is the Idaho outfitters and guides licensing board.

**History.**

I.C., § 36-2404, as added by 2000, ch. 270, am. 2003, ch. 129, § 3, p. 379; am. 2010, ch. 279, § 24, p. 719.  
§ 2, p. 770; am. 2001, ch. 103, § 12, p. 253;

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.  
Department of environmental quality,  
§ 39-104.

Department of fish and game, § 36-101 et seq.

Department of lands, § 58-101 et seq.

Department of water resources, § 42-1701 et seq.

Outfitters and guides licensing board, § 36-2105.

State soil and water conservation commission, § 22-2718.

Transportation department, § 40-501 et seq.

**Amendments.**

The 2010 amendment, by ch. 279, substituted "Idaho state soil and water conservation commission" for "soil conservation commission" in the fourth sentence in subsection (3).

**Effective Dates.**

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

**36-2405. Recommendation on management plans.** — (1) The delisting advisory team shall submit the management plan to the director of the department of fish and game for animal or plant species, for review and recommendation.

(2) The director shall review the management plan and make a recommendation to the fish and game commission. The director may recommend either approval of the management plan, or recommend to return the management plan to the delisting advisory team for further study and review, with instructions, prior to return of the species strategy or management plan to the directors.

(3) If the fish and game commission finds that the management plan provides for the management and conservation of the species when it is delisted by the secretary of the interior or secretary of commerce and that

reasonable safeguards are included in the management plan to protect the health, safety, private property and economic well-being of the citizens of the state of Idaho, the fish and game commission shall approve the management plan.

(4) If the fish and game commission makes the finding required in subsection (3) of this section, the fish and game commission shall forward the state management plan, to the governor's office of species conservation and the legislature. The management plan is subject to legislative approval, amendment or rejection by concurrent resolution at the regular session immediately following the commission's finding and approval of the plan.

(5) The governor's office of species conservation may petition the responsible public agencies to initiate rulemaking to facilitate the implementation of the approved management plan.

(6) Each management plan developed pursuant to this chapter shall include a public education component that shall be developed and implemented in cooperation with other appropriate bureaus of the department of fish and game.

(7) Nothing in this act shall be interpreted as granting the department of fish and game with new or additional authority.

#### **History.**

I.C., § 36-2405, as added by 2000, ch. 270, § 2, p. 770; am. 2003, ch. 129, § 4, p. 379.

#### **STATUTORY NOTES**

##### **Cross References.**

Director of department of fish and game, § 36-106.

Fish and game commission, § 36-102.

Governor's office of species conservation, § 67-818.

to S.L. 2000, ch. 270, which is codified as §§ 36-2401 to 36-2405, 67-818 and 67-819.

##### **Effective Dates.**

Section 5 of S.L. 2000, ch. 270 declared an emergency. Approved April 12, 2000.

##### **Compiler's Notes.**

The words "this act", in subsection (7), refer

# TITLE 37

## FOOD, DRUGS, AND OIL

### CHAPTER.

1. IDAHO FOOD, DRUG AND COSMETIC ACT, §§ 37-101 — 37-134.
2. ADULTERATION AND BRANDING. [REPEALED.]
3. DAIRIES AND DAIRY PRODUCTS, §§ 37-301 — 37-343.
4. SANITARY INSPECTION OF DAIRY PRODUCTS, §§ 37-401 — 37-413.
5. INSPECTION AND LICENSING OF DAIRY PRODUCT DEALERS AND ESTABLISHMENTS. — MILK COMPONENTS AND QUALITY TESTING, §§ 37-501 — 37-519.
6. STANDARDIZATION OF GLASSWARE FOR BABCOCK TESTS. [REPEALED.]
7. PASTEURIZATION OF MARKET MILK AND MARKET MILK PRODUCTS, §§ 37-701 — 37-711.
8. GRADES OF QUALITY FOR MILK AND MILK PRODUCTS, §§ 37-801 — 37-813.
9. LABELS AND BRANDS FOR DAIRY PRODUCTS. [REPEALED.]
10. DISCRIMINATION AND UNFAIR COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS, §§ 37-1001 — 37-1015.
11. ACQUISITION OF RAW MILK, § 37-1101.
12. ICE CREAM AND FROZEN DESSERTS, §§ 37-1201 — 37-1205.
13. LICENSING OF DEALERS IN DAIRY PRODUCT SUBSTITUTES. [REPEALED.]
14. TAX ON SALE OF OLEOMARGARINE PRODUCTS. [REPEALED.]
15. EGGS AND EGG PRODUCTS, §§ 37-1501 — 37-1530.

### CHAPTER.

16. IMPORTED FOOD PRODUCTS, §§ 37-1601 — 37-1610.
17. BUTCHERS, MEAT DEALERS, AND MEAT PEDDLERS. [REPEALED.]
18. POULTRY GRADING AND LABELING. [REPEALED.]
19. MEAT INSPECTION. [REPEALED.]
20. FOOD-PROCESSING ESTABLISHMENTS, CANNING FACTORIES, AND COLD STORAGE PLANTS. [REPEALED.]
21. DOMESTIC WATER AND ICE, §§ 37-2101 — 37-2103.
22. SALE OF DRUGS AND MEDICAL SUPPLIES. [REPEALED.]
23. NARCOTIC DRUGS. [REPEALED.]
24. BARBITURATES. [REPEALED.]
25. OILS, §§ 37-2501 — 37-2520.
26. ENRICHMENT OF BREAD AND FLOUR, §§ 37-2601 — 37-2610.
27. UNIFORM CONTROLLED SUBSTANCES, §§ 37-2701 — 37-2751.
28. CRIMINAL FORFEITURES, §§ 37-2801 — 37-2815.
29. NARCOTIC DRUGS — LICENSING OF DISPENSERS. [REPEALED.]
30. NARCOTIC DRUGS — PRESCRIBING AND DISPENSING — RECORDS. [REPEALED.]
31. NARCOTIC DRUGS — TREATMENT OF ADDICTS, §§ 37-3101 — 37-3110.
32. LEGEND DRUG CODE IMPRINT, §§ 37-3201 — 37-3226.
33. RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS, §§ 37-3301 — 37-3306.

## CHAPTER 1

### IDAHO FOOD, DRUG AND COSMETIC ACT

#### SECTION.

- 37-101 — 37-112. [Repealed.]
- 37-113. Short title.
- 37-114. Definitions.
- 37-115. Prohibited acts.
- 37-116. Injunctions authorized.
- 37-117. Violations — Penalty — Exceptions.
- 37-117A. Reporting and disclosure requirements for employment related adulteration or misappropriation of certain drugs.
- 37-118. Tagging and detention of article or product suspected of being adulterated or misbranded — Embargo and condemnation under certain conditions and by certain procedures.
- 37-119. Prosecutions of violations — Right of party to notice and presenta-

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- tion of views prior to prosecution.
- 37-120. Report of minor violations.
- 37-121. Promulgation of reasonable standards by board.
- 37-122. Food deemed adulterated.
- 37-123. Food deemed misbranded.
- 37-124. Contamination of food with microorganisms — Permit regulations — Access to factory.
- 37-125. Poisonous or deleterious substance — Regulations as to use.
- 37-126. Drugs or devices deemed adulterated.
- 37-127. Drugs or devices deemed misbranded.
- 37-128. Sale of new drugs — Regulations and procedures.

## SECTION.

37-129. Cosmetics deemed adulterated.  
 37-130. Cosmetics deemed misbranded.  
 37-131. False advertising.  
 37-132. Regulations by board — Hearings — Notice.

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37-133. Inspection of establishments — Examination of specimens — Reports — Receipt for samples.  
 37-134. Publication of reports by director — Dissemination of information.

**37-101 — 37-112. Enforcement of food and drug laws. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1905, p. 54, §§ 1 to 3, 6, 8, 21, 22, 31, 38 to 40; reen. R.C., §§ 1114 to 1116, 1119, 1121, 1123, 1147, 1149 to 1152; am. 1909, p. 231, § 1; S.L. 1911,

ch. 128, § 1, p. 415; reen. C.L. 65:1 to 65:3, 65:7 to 65:9, 65:11 to 65:16; C.S., §§ 1671 to 1682; I.C.A., §§ 36-101 to 36-112, were repealed by S.L. 1959, ch. 153, § 24, p. 351.

**37-113. Short title.** — This act may be cited as the Idaho Food, Drug and Cosmetic Act.

**History.**

1959, ch. 153, § 1, p. 351.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch.

153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-114. Definitions.** — For the purpose of this act —

(a) The term "board" means the state board of health and welfare and "director" means the director of the department of health and welfare.

(b) The term "person" includes individual, partnership, corporation, and association;

(c) The term "food" means (1) articles used for food or drink for man or other animals, (2) chewing gum, and (3) articles used for components of any such article;

(d) The term "drug" means (1) articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, and (2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals, and (4) articles intended for use as a component of any article specified in clause (1), (2) or (3), but does not include devices or their components, parts or accessories;

(e) The term "device" (except when used in paragraph (k) of this section and in section [sections] 37-115(g), 37-123(f), 37-127(b) and 37-130(c), Idaho Code) means instruments, apparatus and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals;

(f) The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human

body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance, and (2) articles intended for use as a component of any such articles, except that such term shall not include soap;

(g) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them;

(h) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article, and a requirement made by or under authority of this act that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if there be any, of the retail package of such article, or is easily legible through the outside container or wrapper;

(i) The term "immediate container" does not include package liners;

(j) The term "labeling" means all labels and other written, printed or graphic matter (1) upon an article or any of its containers or wrappers, or (2) accompanying such article;

(k) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then, in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

(l) The term "advertisement" means all representations disseminated in any manner or by any means other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics;

(m) The representation of a drug in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body;

(n) The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

(o) The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations;

(p) The provisions of this act regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale, and the sale, dispensing, and giving of any such article and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment.

(q) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).

**History.**

1959, ch. 153, § 2, p. 351; am. 1974, ch. 23, § 14, p. 633.

**STATUTORY NOTES**

**Cross References.**

Board of health and welfare, § 56-1005.  
Director of department of health and welfare, § 56-1003.

**Compiler's Notes.**

The United States Pharmacopoeia, referred to in subsections (d) and (g), is a non-governmental official public standards-setting authority for prescription and over-the-counter medicines. See <http://www.usp.org>.

The Homeopathic Pharmacopoeia of the United State, referred to in subsections (d) and (g), is the official compendium for homeo-

pathic drug in the United States. See <http://hpus.com>.

The National Formulary, referred to in subsections (d) and (g), contains standards for medicines, dosage forms, drug substances, excipients, medical devices, and dietary supplements. See <http://www.usp.org/USPNF>.

The words in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-115. Prohibited acts.** — The following acts and the causing thereof within the state of Idaho are hereby prohibited:

- (a) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;
- (b) The adulteration or misbranding of any food, drug, device, or cosmetic;
- (c) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;
- (d) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 37-124 or 37-127[, Idaho Code];
- (e) The dissemination of any false advertisement;
- (f) The refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by section 37-133[, Idaho Code];
- (g) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of, the person residing in the state of Idaho from whom he received in good faith the food, drug, device, or cosmetic;
- (h) The removal or disposal of a detained or embargoed article in violation of section 37-118[, Idaho Code];
- (i) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded;

(j) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under the provisions of this act;

(k) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under section 37-128[<sup>1</sup>, Idaho Code], or that such drug complies with the provisions of such section.

**History.**

1959, ch. 153, § 3, p. 351.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertions in subsections (d), (f), (h), and (k) were added by the compiler to conform to the statutory citation style.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**JUDICIAL DECISIONS****Sale of Misbranded Drug.**

The sale and delivery of an over-the-counter hay fever medication in an unmarked container violated the prohibition against selling and delivering a misbranded drug, and

this violation was grounds for discipline under subdivisions (1)(a) and (f) (now paragraphs (a) and (f)) of § 54-1726. Brown v. Idaho State Bd. of Pharmacy, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

**37-116. Injunctions authorized.** — In addition to the remedies hereinafter provided the director is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of section 37-115, Idaho Code, irrespective of whether or not there exists an adequate remedy at law.

**History.**

1959, ch. 153, § 4, p. 351; am. 1974, ch. 23, § 15, p. 633.

**37-117. Violations — Penalty — Exceptions.** — (1)(a) Any person who intentionally adulterates a drug that is held for sale or distribution, or that is to be administered or dispensed, shall be guilty of a felony and shall, upon conviction thereof, be subject to imprisonment for not more than fifteen (15) years or a fine of not more than fifty thousand dollars (\$50,000), or both.

(b) Any health care provider who, with knowledge that a drug has been adulterated, permits that drug to be administered or dispensed to a person shall be guilty of a felony and shall, upon conviction thereof, be subject to imprisonment for not more than fifteen (15) years, or a fine of not more than fifty thousand dollars (\$50,000), or both. For the purposes of this subsection, the term "health care provider" shall be defined as any person licensed in this state to prescribe, dispense, conduct research with respect to, or administer drugs in the course of professional practice and

any unlicensed person, who, as part of such person's employment or profession, provides health care services.

(c) The determination of whether or not a drug has been adulterated shall be made in accordance with the provisions of section 37-126, Idaho Code.

(2) Any person who violates any of the provisions of this act or of rules promulgated by the board of health and welfare thereunder or who interferes with the director of the department of health and welfare or the personnel of the department in the administration of this act shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than six (6) months or a fine of not more than five hundred dollars (\$500), or both such imprisonment and fine, but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one (1) year, or a fine of not more than one thousand dollars (\$1000), or both such imprisonment and fine.

(3) No person shall be subject to the penalties of subsection (2) of this section, for having violated section 37-115 (a) or (c), Idaho Code, if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the state of Idaho from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this act, designating this act.

(4) No publisher, radio broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused, on the request of the director to furnish him the name and post-office address of the manufacturer, packer, distributor, seller, or advertising agency, residing in the state of Idaho who causes him to disseminate such advertisement.

#### History.

1959, ch. 153, § 5, p. 351; am. 1974, ch. 23, § 16, p. 633; am. 2002, ch. 231, § 1, p. 661.

#### STATUTORY NOTES

##### Cross References.

Board of health and welfare, § 56-1005.

Director of department of health and welfare, § 56-1003.

##### Compiler's Notes.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

#### **37-117A. Reporting and disclosure requirements for employment related adulteration or misappropriation of certain drugs. —**

(1) When the employment of a health care provider has been terminated, either voluntarily or involuntarily, for adulteration or misappropriation of controlled substances, as defined in chapter 27, title 37, Idaho Code, the employer shall, within thirty (30) days of the termination, furnish written notice of the termination, described herein as "notice of termination," to the health care provider's professional licensing board of the state of Idaho, which shall include a description of the controlled substance adulteration or

misappropriation involved in the termination. An employer who in good faith provides such information shall not be held civilly liable for the disclosure or the consequences of providing the information. There is a rebuttable presumption that an employer is acting in good faith when the employer provides such information. The presumption of good faith is overcome only upon showing by clear and convincing evidence that the employer disclosed the information with actual malice or with deliberate intent to mislead. For the purposes of this section, "actual malice" means knowledge that the information was false or given with reckless disregard of whether the information was false. For the purposes of this section, the term "health care provider" means any person licensed by a professional licensing board of the state of Idaho whose license permits the health care provider to dispense or administer controlled substances. For the purposes of this section, "employer" means a person or entity licensed under chapter 18, title 54, Idaho Code, or chapter 13, title 39, Idaho Code, who employs a health care provider or providers.

(2) A professional licensing board that receives a notice of termination from an employer pursuant to subsection (1) of this section shall maintain the notice of termination for the health care provider. The notice of termination shall be subject to disclosure in accordance with the provisions of subsection (3) of this section.

(3) Any prospective employer of a health care provider shall, before hiring such health care provider, request in writing that the health care provider's professional licensing board furnish the prospective employer any notice of termination maintained by the board with respect to the health care provider. The prospective employer shall maintain the confidentiality of such information and shall not disclose it to any other person or entity without the prior written approval of the health care provider or as required by law, court order or the rules of civil procedure. The professional licensing board shall require, as a condition of furnishing the notice of termination, that the prospective employer file a written request for the health care provider's notice of termination, stating under oath that the request for the notice of termination is made for a bona fide hiring purpose, that the request is made pursuant to the provisions of this section, and that the prospective employer will not disclose the information to any other person or entity without the prior written approval of the health care provider or as required by law, court order or rules of civil procedure. In the event that the prospective employer discloses the information in the notice of termination to any other person or entity in violation of the provisions of this section, and unless the disclosure is required by law, court order or the rules of civil procedure, the health care provider may pursue a civil cause of action against the prospective employer for a breach of the health care provider's right of privacy. Upon receipt of a request made in accordance with this section for a health care provider's notice of termination, the professional licensing board shall furnish the notice of termination to the prospective employer. The professional licensing board shall not be held liable for the correctness or completeness of the information contained in the notice of termination and shall include a disclaimer statement on all released information, attesting that the information has not been verified by the

professional licensing board. An employer who obtains a notice of termination from the appropriate professional licensing board as provided in this section shall not be held civilly liable for hiring or contracting with a health care provider who the employer in good faith believes has been rehabilitated from drug abuse, absent the employer's gross negligence or reckless conduct.

(4) Notices of termination submitted hereunder shall be maintained and available to employers as set forth above for fifteen (15) years from the date of receipt by the professional licensing board.

**History.**

I.C., § 37-117A, as added by 2004, ch. 333,  
§ 1, p. 993.

**37-118. Tagging and detention of article or product suspected of being adulterated or misbranded — Embargo and condemnation under certain conditions and by certain procedures.** — (a) Whenever a duly authorized agent of the director finds or has probable cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of this act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) of this section has been found by such agent to be adulterated, or misbranded, he shall petition the probate court or district court in the county in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree be destroyed at the expense of the claimant thereof, under the supervision of such agent, and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the director. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the director that the article is no longer in violation of this act, and that the expenses of such supervision have been paid.

(d) Whenever the director or any of its authorized agents shall find in any room, building, vehicle of transportation or other structure, any meat, sea

food, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed, or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the director or its authorized agent, shall forthwith condemn or destroy the same, or in any other manner render the same unsaleable as human food.

(e) Whenever the director or its duly authorized agent shall find, or have probable cause to believe, that any food, drug, device or cosmetic is offered or exposed for sale, or held in possession with intent to distribute or sell, or is intended for distribution or sale in violation of any provision of this act, whether it is in the custody of a common carrier or any other person, the director may affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, in violation of this act, and has been embargoed. Within seven (7) days after an embargo has been placed upon any article, the embargo shall be removed by the director or a summary proceeding for the confiscation of the article shall be instituted by the director. No person shall remove or dispose of such embargoed article by sale or otherwise without the permission of the director or agent; or after summary proceedings have been instituted, without permission from the court. If the embargo shall be removed by the director or by the court, neither the director nor the state shall be held liable for damages because of such embargo in the event that the court shall find that there was probable cause for the embargo.

(f) Such proceeding shall be by complaint, verified by affidavit, which may be made on information and belief in the name of the director or agent against the article to be confiscated.

(g) The complaint shall contain: (1) a particular description of the article, (2) the name of the place where the article is located, (3) the name of the person in whose possession or custody the article was found, if such name be known to the person making the complaint or can be ascertained by reasonable effort, and (4) a statement as to the manner in which the article is adulterated or misbranded or the characteristics which render its distribution or sale illegal.

(h) Upon the filing of the verified complaint, the court shall issue a warrant directed to the proper officer to seize and take in his possession the article described in the complaint and bring the same before the court who issued the warrant and to summon the person named in the warrant, and any other person who may be found in possession of the article, to appear at the time and place therein specified.

(i) Any such person shall be summoned by service of a copy of the warrant in the same manner as a summons issuing out of the court in which the warrant has been issued.

(j) The hearing upon the complaint shall be at the time and place specified in the warrant, which time shall not be less than five (5) days or more than fifteen (15) days from the date of issuing the warrant, but, if the execution and service of the warrant has been less than three (3) days before the return of the warrant, either party shall be entitled to a reasonable continuance. Upon the hearing the complaint may be amended.

(k) Any person who shall appear and claim the food, drug, device, or cosmetic seized under the warrant shall be required to file a claim in writing.

(l) If, upon the hearing, it shall appear that the article was offered or exposed for sale, or was in possession with intent to distribute or sell, or was intended for distribution or sale, in violation of any provision of this act, it shall be confiscated and disposed of by destruction or sale as the court may direct, but no such article shall be sold contrary to any provision of this act. The proceeds of any sale, less the legal costs and charges, shall be paid into the state treasury.

**History.**

1959, ch. 153, § 6, p. 351; am. 1974, ch. 23, § 17, p. 633.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch.

153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-119. Prosecutions of violations — Right of party to notice and presentation of views prior to prosecution.** — It shall be the duty of each county prosecuting attorney to whom the director or his agent reports any punishable violation of this act (including, but not limited to, rules and regulations) to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. Before any violation of this act is reported to the county prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the director or his designated agent, either orally or in writing, in person, or by attorney, with regard to such contemplated proceeding.

**History.**

1959, ch. 153, § 7, p. 351; am. 1974, ch. 23, § 18, p. 633.

**STATUTORY NOTES****Compiler's Notes.**

The words in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-120. Report of minor violations.** — Nothing in this act shall be construed as requiring the director to report for the institution of proceedings under this act, minor violations of this act, whenever the director believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

**History.**

1959, ch. 153, § 8, p. 351; am. 1974, ch. 23, § 19, p. 633.

## STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch.

153 compiled herein as §§ 37-113 to 37-117  
and 37-118 to 37-134.

**37-121. Promulgation of reasonable standards by board.** — Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity, and/or reasonable standard of quality and/or fill of container. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under authority of the federal act.

**History.**

1959, ch. 153, § 9, p. 351.

**37-122. Food deemed adulterated.** — A food shall be deemed to be adulterated — (a) (1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or (2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of section 37-125[*, Idaho Code*]; or (3) if it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or (4) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or (5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or (6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(b) (1) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

(c) If it is confectionery and it bears or contains any alcohol or non-nutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum (.4%) harmless natural gum, and pectic; Provided, that this paragraph shall not apply to any confectionery by reason of its containing less than one-half of one per centum (.5%) by volume of alcohol derived solely from the use of

flavoring extracts, or to any chewing gum by reason of its containing harmless non-nutritive masticatory substances.

(d) If it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

**History.**

1959, ch. 153, § 10, p. 351.

**STATUTORY NOTES**

**Compiler's Notes.** (a)(2) was added by the compiler to conform to  
The bracketed insertion in subdivision the statutory citation style.

**37-123. Food deemed misbranded.** — A food shall be deemed to be misbranded —

- (a) If its labeling is false or misleading in any particular.
- (b) If it is offered for sale under the name of another food.
- (c) If it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation, and, immediately thereafter, the name of the food imitated.
- (d) If its container is so made, formed, or filled as to be misleading.
- (e) If in package form, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board.
- (f) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (g) If it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by section 37-121[*, Idaho Code*], unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, in so far as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food.
- (h) If it purports to be or is represented as — (1) A food for which a standard of quality has been prescribed by regulations as provided by section 37-121[*, Idaho Code*], and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or (2) A food for which a standard or standards of fill of container have been prescribed by regulation as provided by section 37-121[*, Idaho Code*], and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard.

(i) If it is not subject to the provisions of paragraph (g) of this section, unless it bears labeling clearly giving (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings, without naming each; Provided, that, to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board.

(j) If it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral, and other dietary properties as the board determines to be, and by regulations prescribed, as, necessary in order to fully inform purchasers as to its value for such uses.

(k) If it bears or contains any artificial flavoring, artificial coloring, or chemical preservative, unless it bears labeling stating that fact; Provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board.

**History.**

1959, ch. 153, § 11, p. 351.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions in subsections (g) and (h) were added by the compiler to conform to the statutory citation style.

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-124. Contamination of food with microorganisms — Permit regulations — Access to factory.** — (a) Whenever the director finds after investigation that the distribution in Idaho of any class of food may, by reason of contamination with microorganisms during manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered commerce, he then, and in such case only, shall prescribe regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations.

(b) The director is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the

conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended.

(c) Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

**History.**

1959, ch. 153, § 12, p. 351; am. 1974, ch. 23, § 20, p. 633.

**37-125. Poisonous or deleterious substance — Regulations as to use.** — Any poisonous or deleterious substance added to any food except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of clause (2) of section 37-122 (a)[, Idaho Code]; but when such substance is so required or cannot be so avoided, the board shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of clause (2) of section 37-122 (a)[, Idaho Code]. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) section 37-122 (a)[, Idaho Code]. In determining the quantity of such added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

**History.**

1959, ch. 153, § 13, p. 351.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed insertions in this section

were added by the compiler to conform to the statutory citation style.

**37-126. Drugs or devices deemed adulterated.** — A drug or device shall be deemed to be adulterated:

(a) (1) If it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or

whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified under the authority of the federal act.

(b) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or in the absence of or inadequacy of such tests or methods of assay, these prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia. Nothing in this subsection shall be deemed to prohibit a change in the strength, quality or purity of a drug, if the change is made by or pursuant to the orders of a practitioner prescribing the drug for the purpose of administering the drug to a patient.

(c) If it is not subject to the provisions of subsection (b) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess. Nothing in this subsection shall be deemed to prohibit a change in the strength, quality or purity of a drug, if the change is made by or pursuant to the orders of the practitioner prescribing the drug for the purpose of administering the drug to a patient.

(d) If it is a drug and any substance has been: (1) mixed or packed therewith so as to reduce its quality or strength; or (2) substituted wholly or in part therefor. Nothing in this subsection shall be deemed to prohibit a change in the strength, quality or purity of a drug, if the change is made by or pursuant to the orders of the practitioner prescribing the drug for the purpose of administering the drug to a patient.

#### **History.**

1959, ch. 153, § 14, p. 351; am. 2002, ch. 231, § 2, p. 661.

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

The United States Pharmacopoeia, referred to in subsection (b), is a non-governmental official public standards-setting authority for

prescription and over-the-counter medicines. See <http://www.usp.org>.

The Homeopathic Pharmacopoeia of the United State, referred to in subsection (b), is

the official compendium for homeopathic drug in the United States. See <http://hpus.com>.

## JUDICIAL DECISIONS

### Sale of Misbranded Drug.

The sale and delivery of an over-the-counter hay fever medication in the unmarked container violated the prohibition against selling and delivering a misbranded

drug, and this violation was grounds for discipline under subdivisions (1)(a) and (f) (now paragraphs (a) and (f)) of § 54-1726. *Brown v. Idaho State Bd. of Pharmacy*, 113 Idaho 547, 746 P.2d 1006 (Ct. App. 1987).

**37-127. Drugs or devices deemed misbranded.** — A drug or device shall be deemed to be misbranded — (a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board.

(c) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha-eucaine, barbituric acid, beta-eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marihuana [marijuana], morphine, opium, paraldehyde, peyete [peyote], or sulphonmethane, or any chemical derivative of such substance, which derivative has been by the board after investigation, found to be, and by regulations under this act, designated as habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning — May be habit forming."

(e) If it is a drug and is not designated solely by a name recognized in an official compendium unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two (2) or more ingredients, the common or usual name of each active ingredient, including the kind and quantity or proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetophenetidin, amidapryrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis glucosines, mercury, ouabain, strophantidin, strychnine, thyroid, or any derivative or preparation of any substances, contained therein: Provided, that to the extent that compliance with the requirements of clause (2) of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board.

(f) Unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by

children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of clause (1) of this paragraph, as applied to any drug or device, is not necessary for the protection of the public health, the board shall promulgate regulations exempting such drug or device from such requirements.

(g) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the board. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic [homeopathic] drug, in which case it shall be subject to the provisions of the Homoeopathic [Homeopathic] Pharmacopoeia of the United States, and not to those of the United States Pharmacopoeia.

(h) If it has been found by the board to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the board shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the board shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.

(i) (1) If it is a drug and its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug.

(j) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.

(k) If it is a drug sold at retail and quantity of aminopyrine, barbituric acid, cinchophen, dinitrophenol, sulfanilamide or their derivatives, or any other drug which has been found by the board to be dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof, and so designated by the board in a regulation adopted; unless it is sold on a written prescription signed by a member of the medical, osteopathic, chiropodial, dental, or veterinary profession who is licensed by law to administer such drug, and its label bears the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, osteopathic, chiropodial, dental, or veterinary profession.

(l) A drug sold on a written prescription signed by a member of the medical, osteopathic, chiropodial, dental, or veterinary profession (except a drug sold in the course of the conduct of a business of selling drugs pursuant to diagnosis by mail) shall be exempt from the requirements of this section if — (1) such member of the medical, osteopathic, chiropodial, dental, or veterinary profession is licensed by law to administer such drug, and (2)

such drug bears a label containing the name and place of business of the seller, the serial number and date of such prescription, and the name of such member of the medical, osteopathic, chiropodial, dental, or veterinary profession.

**History.**

1959, ch. 153, § 15, p. 351.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed words "marijuana" and "peyote" in subsection (d) and the bracketed words "homeopathic" and "Homeopathic" in the second sentence of subsection (g) were inserted by the compiler.

The United States Pharmacopoeia, referred to in subsection (g), is a non-governmental official public standards-setting authority for prescription and over-the-counter medicines. See <http://www.usp.org>.

The Homeopathic Pharmacopoeia of the United States, referred to in subsection (g), is the official compendium for homeopathic drug in the United States. See <http://hpus.com>.

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**RESEARCH REFERENCES**

**A.L.R.** — Common-law right of action for damage sustained by plaintiff in consequence of sale or gift of intoxicating liquor or habit-

forming drug to another. 97 A.L.R.3d 528; 62 A.L.R.4th 16.

**37-128. Sale of new drugs — Regulations and procedures.** — (a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless (1) an application with respect thereto has become effective under section 505 of the federal act, or (2) when not subject to the federal act unless such drug has been tested and has not been found to be unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the director an application setting forth (a) full reports of investigations which have been made to show whether or not such drug is safe for use; (b) a full list of the articles used as components of such drug; (c) a full statement of the composition of such drug; (d) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (e) such samples of such drugs and of the articles used as components thereof as the board may require; and (f) specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subsection (a)(2) shall become effective on the sixtieth (60th) day after the filing thereof, except that if the director finds after due notice to the applicant and giving him an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the proposed labeling thereof, he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) This section shall not apply — (1) to a drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety in drugs provided the drug is plainly labeled "For investigational use only"; or (2) to a drug sold in this state at any time prior

to the enactment of this act or introduced into interstate commerce at any time prior to the enactment of the federal act; or (3) to any drug which is licensed under the Virus, Serum, and Toxin Act of July 1, 1902 (U.S.C. 1934 ed. title 42, Chap. 4).

(d) An order refusing to permit an application under this section to become effective may be revoked by the director.

**History.**

1959, ch. 153, § 16, p. 351; am. 1974, ch. 23, § 21, p. 633.

**STATUTORY NOTES**

**Federal References.**

Section 505 of the federal act, referred to in subsection (a), is compiled as 21 USCS § 355.

The Virus, Serum, and Toxin Act of July 1, 1902, referred to in clause (3) of subsection (c) of this section, was repealed by Act of July 1, 1944, ch. 373, 58 Stat. 714. The present law on this subject is Act July 1, 1944, ch. 373, Title III, § 351, 58 Stat. 702, which may be found in 42 USCS § 262 et seq.

**Compiler's Notes.**

The phrase "enactment of this act", in subsection (c), refers to the enactment of S.L.

1959, Chapter 153, which was approved and effective March 15, 1959.

The phrase "enactment of the federal act", in subsection (c), refers to the enactment of the Federal Food, Drug and Cosmetic Act, 21 USCS § 301 et seq., which was enacted June 25, 1938, effective 12 months after enactment.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

The words enclosed in parentheses so appeared in the law as enacted.

**37-129. Cosmetics deemed adulterated.** — A cosmetic shall be deemed to be adulterated — (a) If it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling or advertisement thereof, or under such conditions of use as are customary or usual. Provided, that this provision shall not apply to coal-tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution — This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness," and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph (e) the term "hair dye" shall not include eyelash dyes or eyebrow dyes.

(b) If it consists in whole or in part of any filthy, putrid, or decomposed substance.

(c) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

(d) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

(e) If it is not a hair dye and it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

**History.**

1959, ch. 153, § 17, p. 351.

**37-130. Cosmetics deemed misbranded.** — A cosmetic shall be deemed to be misbranded — (a) If its labeling is false or misleading in any particular.

(b) If in package form unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: Provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established by regulations prescribed by the board.

(c) If any word, statement, or other information required by or under authority of this act to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(d) If its container is so made, formed, or filled as to be misleading.

**History.**

1959, ch. 153, § 18, p. 351.

**STATUTORY NOTES**

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-131. False advertising.** — (a) An advertisement of a food, drug, device, or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this act the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria [diphtherial], dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, venereal disease, shall also be deemed to be false, except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, osteopathic, chiropodial, dental, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public-health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the board determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the board may deem necessary in the interests of public health: Provided, that this subsection shall not be construed as indicating

that self-medication for diseases other than those named herein is safe or efficacious.

**History.**

1959, ch. 153, § 19, p. 351.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed word "diphtheria" in subsection (b) was inserted by the compiler to correct the spelling.

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-132. Regulations by board — Hearings — Notice.** — (a) The authority to promulgate regulations for the efficient enforcement of this act is hereby vested in the board. The board is hereby authorized to make the regulations promulgated under this act conform, in so far as practicable with those promulgated under the federal act.

(b) Hearings authorized or required by this act shall be conducted by the board or such officer, agent, or employee as the board may designate for the purpose.

(c) Before promulgating any regulations contemplated by section 37-121; 37-123 (j); 37-124; 37-127 (d), (f), (g), (h), and (k), or 37-131 (b)[, Idaho Code], the board shall give appropriate notice of the proposal and of the time and place for a hearing. The regulation so promulgated shall become effective on a date fixed by the board (which date shall not be prior to 30 days after its promulgation). Such regulation may be amended or repealed in the same manner as is provided for its adoption, except that in the case of a regulation amending or repealing any such regulation the board, to such an extent as it deems necessary in order to prevent undue hardship, may disregard the foregoing provisions regarding notice, hearing, or effective date.

**History.**

1959, ch. 153, § 20, p. 351.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in subsection (c) was added by the compiler to conform to the statutory citation style.

The words enclosed in parentheses so appeared in the law as enacted.

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-133. Inspection of establishments — Examination of specimens — Reports — Receipt for samples.** — The director or his duly authorized agent shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold such foods, drugs, devices, or cosmetics in commerce, for the purpose: (1) of inspecting

such factory, warehouse, establishment, or vehicle to determine if any of the provisions of this act are being violated, and (2) to secure samples or specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample. It shall be the duty of the director to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of this act is being violated.

(a) Upon the completion of any inspection of a factory, warehouse, or other establishment and prior to leaving the premises, the director or his duly authorized agent making the inspection shall give to the owner, operator, or agent in charge, a report in writing setting forth any condition or practice observed by him which in his judgment indicates that any food, drug, device, or cosmetic in the establishment (1) consists in whole or in part of any filthy, putrid, or decomposed substances; or (2) has been prepared, packed, or held in unsanitary condition whereby it may have become contaminated with filth or whereby it may be rendered injurious to health.

(b) If the director or his duly authorized agent making any such inspection of any warehouse, factory, or other establishment has obtained any samples in the process of the inspection, upon completion of the inspection and prior to his leaving the premises, he shall give to the owner, operator, or agent in charge, a receipt describing the samples obtained.

(c) Whenever in the course of any such inspection of the factory, or other establishment where food is manufactured, processed, or packed, the director or his duly authorized agent making the inspection obtains a sample of any such food and if analysis is made of such sample for the purpose of determining whether such food consists in whole or part of any filthy, putrid or decomposed substance, or is otherwise unfit for food, a copy of the results of such analysis shall be sent promptly to the owner, operator, or agent in charge.

#### History.

1959, ch. 153, § 21, p. 351; am. 1974, ch. 23, § 22, p. 633.

#### STATUTORY NOTES

##### Compiler's Notes.

The words "this act" refer to S.L. 1959, ch.

153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

**37-134. Publication of reports by director — Dissemination of information.** — (a) The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this act, including the nature of the charge and the disposition thereof.

(b) The director may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as the board deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of the investigations of the director.

**History.**

1959, ch. 153, § 22, p. 351; am. 1974, ch. 23, § 23, p. 633.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch. 153 compiled herein as §§ 37-113 to 37-117 and 37-118 to 37-134.

Section 23 of S.L. 1959, ch. 153 read: "If any provision of this act is declared unconstitutional or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and

applicability thereof to other persons and circumstances shall not be affected thereby."

**Effective Dates.**

Section 25 of S.L. 1959, ch. 153 declared an emergency. Approved March 16, 1953.

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

**CHAPTER 2****ADULTERATION AND BRANDING****SECTION.**

37-201 — 37-223. [Repealed.]

**37-201 — 37-216. Manufacture or sale of adulterated or misbranded articles prohibited — Distribution of free samples prohibited — Inspectors' right of access — Standards established — Disposition of fines. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1911, ch. 196, §§ 1 to 12, p. 653; reen. C.L. 65:17 to 65:32; C.S., §§ 1683 to 1698; am. 1923, ch. 29, § 1, p. 30; I.C.A., §§ 36-301 to 36-316 were repealed by S.L. 1959, ch. 153, § 24, p. 351.

**37-217. Sale of tainted food a misdemeanor. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised S.L. 1864, p. 467, § 131; R.S. & R.C., § 1619; reen. C.L. 65:32a; C.S., § 1699; I.C.A., § 36-317, was repealed by S.L. 1959, ch. 153, § 24, p. 351.

**37-218 — 37-222. Baking powders and vinegars, regulation. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1905, p. 54, §§ 23, 25 to 28; reen. R.C., §§ 1134, 1136 to 1139; reen. C.L. 65:33 to 65:37; C.S., §§ 1700 to 1704; I.C.A., §§ 36-318 to 36-322, were repealed by S.L. 1959, ch. 153, § 24, p. 351.

**37-223. Nonfat dry milk solids, defatted milk solids and milk defined. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1953,

ch. 128, § 1, p. 204, was repealed by S.L. 1967, ch. 36, § 1.

**CHAPTER 3**

**DAIRIES AND DAIRY PRODUCTS**

**SECTION.**

- 37-301. Names of dairymen.
- 37-302. Dairies to be inspected.
- 37-303. Excluding poor milk from sale. [Repealed.]
- 37-304. Milk wagons to be kept clean. [Repealed.]
- 37-305. Milk wagons to be covered. [Repealed.]
- 37-306. Milk-bottling place.
- 37-307. Care and use of containers for delivering milk and cream. [Repealed.]
- 37-308. Milk must be bottled or packaged in paper cartons.
- 37-309. Cans must be washed and scalded. [Repealed.]
- 37-310. Empty bottles from quarantined premises.
- 37-311. Refilling bottles owned by others. [Repealed.]
- 37-312. Cold storage butter must be dated. [Repealed.]
- 37-313. Sale of diluted milk forbidden.
- 37-314. Milk deemed to be adulterated.
- 37-315. Milkmen afflicted with disease.
- 37-316. Selling milk from infected premises.
- 37-317. Milk required to be cooled — When saleable.
- 37-318. Milk kept near insanitary premises. [Repealed.]
- 37-319. Skim milk — When salable. [Repealed.]
- 37-320. Skimmed milk — Standard. [Repealed.]
- 37-321. Skim milk — Manufacturers may handle wholesale. [Repealed.]
- 37-322. Standard for cream.
- 37-323. Weight of milk. [Repealed.]
- 37-324. Penalty for violations.
- 37-325. Reports by dairies, creameries and cheese factories.
- 37-326. Standards for dairy products.
- 37-327. Sale of cheese containing foreign substances unlawful. [Repealed.]
- 37-328. Fraudulent sale of imitation butter unlawful — Regulations pertaining to sale of colored oleomargarine or margarine — Misadvertising of oleomarga-

**SECTION.**

- rine or margarine unlawful. [Repealed.]
- 37-329. Use of imitation butter in eating houses — Required to post notices. [Repealed.]
- 37-330. Penalty for violating sections 37-325 through 37-329.
- 37-331. Process butter — Restrictions on sale. [Repealed.]
- 37-332. Butter and whey butter — Definitions and qualities.
- 37-332a. Butter grades.
- 37-332b. Improperly graded butter — Sale unlawful — Grade emblem — Exception.
- 37-332c. Butter graders — Employment — Notice to department — Chief grader — Responsibility of graders — Change of graders — Notice to department — Responsibility of manufacturer for wrapper — Revocation of privilege of using grade emblem.
- 37-332d. Licensing of butter graders — Examination — Duration — Fees.
- 37-332e. Revocation or suspension of license.
- 37-332f. Enforcement of act by department — Rules and regulations.
- 37-332g. Violations of statute — Misdemeanor — Punishment.
- 37-332h. License fees, disposition, use.
- 37-333. Weight of butter.
- 37-334. Advertising substitutes for dairy products.
- 37-334a. Food products made to resemble dairy products — Definitions.
- 37-334b. Label requirements for food products made to resemble dairy products. [Repealed.]
- 37-334c. Ingredient and nutritional values. [Repealed.]
- 37-334d. Quality standards for food products made to resemble dairy products.
- 37-334e. License requirements for manufacturers of food products made to resemble dairy products.

## SECTION.

- 37-334f. Registration requirements for food products made to resemble dairy products. [Repealed.]  
 37-335. Penalty — Enforcement.  
 37-336. Oleomargarine — Purchase for public institutions unlawful — Exception. [Repealed.]  
 37-337. Penalty for violating section 37-336. [Repealed.]  
 37-338. Department of agriculture to administer act.  
 37-339. Breed name of dairy cattle carried on

## SECTION.

- label of milk and milk products — Policy.  
 37-340. Use of breed name on label unlawful unless derived exclusively from registered dairy herds — Permit.  
 37-341. Administration and enforcement of act.  
 37-342. Violations of §§ 37-339 through 37-343 a misdemeanor.  
 37-343. Injunction proceedings additional remedy for violations.

**37-301. Names of dairymen.** — All wholesale dairymen and other persons having stationary places of business, keeping and offering for sale milk, shall at all times keep the name or names of the dairymen or dairymen, from whom the milk on sale shall have been obtained.

## History.

1911, ch. 190, § 1, p. 627; reen. C.L. 65:38;

C.S., § 1705; I.C.A., § 36-401; am. 1967, ch. 54, § 1, p. 104.

## STATUTORY NOTES

## Cross References.

Enforcement not affected by chapter 5 of this title, § 37-519.

Penalty for violation, § 37-324.

**37-302. Dairies to be inspected.** — It shall be the duty of the director of the department of agriculture to cause to be visited as frequently as it may deem necessary all dairies supplying dealers and consumers with milk, and inspect the same. A copy of the inspection report shall be left with the owner and such information given as will assist the producer to improve the sanitary conditions or remedy such defects as the inspection report indicates. A copy of the inspection report shall be kept on file in the office of the director.

## History.

I.C., § 37-302, as reen. 1967, ch. 54, § 2, p.

104; am. 1974, ch. 23, § 24, p. 633; am. 1992, ch. 93, § 1, p. 295.

## STATUTORY NOTES

## Cross References.

Director of department of agriculture, § 22-101.

Penalty for violation, § 37-324.

reenacted this section. Prior to 1967 this section comprised S.L. 1911, ch. 190, § 2, p. 627; reen. C.L. 65:39; C.S., § 1706; I.C.A., § 36-402.

## Compiler's Notes.

Section 2 of S.L. 1967, ch. 54 repealed and

**37-303. Excluding poor milk from sale. [Repealed.]**

## STATUTORY NOTES

## Compiler's Notes.

This section, which comprised S.L. 1911, ch. 190, § 3, p. 627; reen. C.L. 65:40; C.S.,

§ 1707; I.C.A., § 36-403; am. 1955, ch. 176, § 1, p. 357, was repealed by S.L. 1967, ch. 54, § 5.

**37-304. Milk wagons to be kept clean. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, comprising S.L. 1911, ch. 190, § 4, p. 627; reen. C.L. 65:41; C.S., § 1708;

I.C.A., § 36-404; am. 1955, ch. 176, § 2, p. 357, was repealed by S.L. 1967, ch. 54, § 6.

**37-305. Milk wagons to be covered. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, comprising S.L. 1911, ch. 190, § 5, p. 627; reen. C.L. 65:42; C.S., § 1709;

I.C.A., § 36-405; am. 1955, ch. 176, § 3, p. 357, was repealed by S.L. 1967, ch. 54, § 7.

**37-306. Milk-bottling place.** — No person, firm or corporation shall bottle any milk upon a delivery truck or vehicle or in any place other than a milk house or other building where milk is regularly processed and/or bottled and used solely for such purposes as may be approved by the director of the department of agriculture.

**History.**

1911, ch. 190, § 6, p. 628; reen. C.L. 65:43; C.S., § 1710; I.C.A., § 36-406; am. 1955, ch.

176, § 4, p. 357; am. 1974, ch. 23, § 25, p. 633; am. 1992, ch. 93, § 2, p. 295.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**37-307. Care and use of containers for delivering milk and cream. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 190, § 7, p. 628; reen. C.L. 65:44; C.S.,

§ 1711; I.C.A., § 36-407; am. 1937, ch. 107, § 1, p. 160, was repealed by S.L. 1955, ch. 176, § 5, p. 357.

**37-308. Milk must be bottled or packaged in paper cartons.** — No person, firm or corporation shall give, furnish, sell or offer for sale, or deliver any milk or market milk products in quantities of one (1) gallon and less except in sanitary bottles or paper cartons, sealed with suitable cap or stopper, which are consistent with the requirements of the department of agriculture regulations.

**History.**

1911, ch. 190, § 8, p. 628; reen. C.L. 65:45; C.S., § 1712; am. 1929, ch. 19, § 1, p. 20; I.C.A., § 36-408; am. 1941, ch. 141, § 3, p.

274; am. 1955, ch. 176, § 6, p. 357; am. 1967, ch. 54, § 3, p. 104; am. 1974, ch. 23, § 26, p. 633; am. 1992, ch. 93, § 3, p. 295.

### STATUTORY NOTES

**Cross References.**

Penalty for violation hereof, § 37-324.

**37-309. Cans must be washed and scalded. [Repealed.]**

### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 190, § 9, p. 628; reen. C.L. 65:46; C.S., § 7, p. 357. § 1713; am. 1921, ch. 119, § 1, p. 294; I.C.A., § 36-409, was repealed by S.L. 1955, ch. 176,

**37-310. Empty bottles from quarantined premises.** — No person, firm or corporation shall remove from any dwelling in which any communicable disease exists any bottles or other receptacles which have been or which are to be used for containing or storing milk, except by permission of the department of agriculture.

**History.**

1911, ch. 190, § 10, p. 628; reen. C.L. 65:47; C.S., § 1714; I.C.A., § 36-410; am. 1992, ch.

93, § 4, p. 295.

### STATUTORY NOTES

**Cross References.**

Penalty for violation hereof, § 37-324.

Department of agriculture, § 22-101 et seq.

**37-311. Refilling bottles owned by others. [Repealed.]**

### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 190, § 11, p. 628; compiled and reen. C.L. 65:48; C.S., § 1715; I.C.A., § 36-411, was repealed by S.L. 1955, ch. 176, § 8, p. 357.

**37-312. Cold storage butter must be dated. [Repealed.]**

### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 190, § 12, p. 628; reen. C.L. 65:49; C.S., § 1716; I.C.A., § 36-412, was repealed by S.L. 1955, ch. 176, § 9, p. 357.

**37-313. Sale of diluted milk forbidden.** — No milk adulterated, or changed in any respect by the addition of water or other substances, except as hereinafter provided, shall be sold or offered for sale; nor shall any person, firm or corporation keep, have, sell or offer for sale, or have in his, their or its possession with intent to sell, any such milk.

**History.**

1911, ch. 190, § 13, p. 629; reen. C.L. 65:50; C.S., § 1717; I.C.A., § 36-413; am. 1955, ch.

176, § 10, p. 357.

## STATUTORY NOTES

**Cross References.**

Penalty for violation hereof, § 37-324.

**37-314. Milk deemed to be adulterated.** — Milk shall be deemed to be adulterated in any one of the following cases:

1. Milk containing more than eighty-nine per cent (89%) of water or fluid.
  2. Milk containing less than eight and twenty-five hundredths per cent (8.25%) of milk solids other than fat.
  3. Milk containing less than three and twenty-five hundredths per cent (3.25%) of butterfat, when offered in retail trade for human consumption.
  4. Milk drawn from animals within fifteen (15) days before or five (5) days after parturition.
  5. Milk drawn from animals fed on any substance in a state of putrefaction or rottenness or any unwholesome food.
  6. Milk drawn from cows kept in a crowded, unsanitary or unhealthy condition.
  7. Milk which has been diluted with water or any other fluid, or to which has been added, or into which has been introduced, any foreign substance whatever, except fresh cream, or skimmed milk or vitamins may be added in amounts and by methods approved by the department of agriculture.
  8. Milk containing any pathogenic bacteria.
  9. Milk containing any boracic or salicylic acid, formaldehyde, or other foreign chemical, or any preservative whatsoever.
  10. Milk containing bacteria of any kind more than eighty thousand (80,000) per cubic centimeter.
  11. Milk drawn from any cow having a disease or from any cow or cows in a herd which contains any diseased cattle, or from a cow or cows in a herd the attendants of which are afflicted with or have been exposed to any communicable disease.
  12. Milk which shows a dark grey, black or other sediment at the bottom of any bottle or other vessel in which it is contained.
- Provided, however, that milk classified as low fat milk (containing two per cent (2%) or less butterfat) shall not be deemed adulterated under this section if manufactured and sold under regulations or definitions of the department of agriculture.

**History.**

1911, ch. 190, § 14, p. 629; reen. C.L. 65:51; C.S., § 1718; I.C.A., § 36-414; am. 1935, ch. 98, § 1, p. 207; am. 1955, ch. 176, § 11, p. 357; am. 1957, ch. 167, § 1, p. 306; am. 1967, ch. 54, § 4, p. 104; am. 1974, ch. 23, § 27, p. 633; am. 1992, ch. 93, § 5, p. 295.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.  
Inspections, § 37-401, et seq.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

## JUDICIAL DECISIONS

**"Water" Distinguished from "Chemical."**

The legislature has indicated by its use of the word "chemical" in several statutes that

water should not be considered to be a "chemical." *Moosman v. Idaho Horse Racing Comm'n*, 117 Idaho 949, 793 P.2d 181 (1990).

**37-315. Milkmen afflicted with disease.** — Any milkman or dairyman being afflicted, or any member of whose family is afflicted, with a communicable disease, shall report the same to the state department of agriculture within twenty-four (24) hours after he knows or has reason to suspect such communicable disease, and the department shall take such steps as are prescribed by the director of the department of agriculture for the prevention of the spread of said communicable disease by said milkman, dairyman, his family, hired help or their families.

**History.**

1911, ch. 190, § 15, p. 630; reen. C.L. 65:52; C.S., § 1719; I.C.A., § 36-415; am. 1974, ch.

23, § 28, p. 633; am. 1992, ch. 93, § 6, p. 295.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.  
Penalty for violation, § 37-324.

Person with contagious disease who exposes himself in public place, guilty of misdemeanor, § 18-5802.

**37-316. Selling milk from infected premises.** — No milk or cream shall be sold or dispensed as food from any house, store, shop, dairy or other place in which there is a case of contagious or infectious disease, as aforesaid, until all danger of contagion has been removed, and permission in writing is obtained from the department of agriculture authorizing the sale of milk or cream, from said house, shop, or from said dairy, or other place.

The existence of smallpox, typhoid fever, diphtheria, scarlet fever, measles or other communicable diseases on or in the immediate vicinity of the dairy farm shall be promptly reported to the director of the department of agriculture, and the sale of milk shall be stopped until its resumption is authorized as provided by law.

**History.**

1911, ch. 190, § 16, p. 630; am. 1917, ch. 103, § 1, p. 379; reen. C.L. 65:53; C.S., § 1720; I.C.A., § 36-416; am. 1974, ch. 23, § 29, p. 633; am. 1992, ch. 93, § 7, p. 295.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

Penalty for violation, § 37-324.

**37-317. Milk required to be cooled — When saleable.** — Milk which has not been properly cooled to a temperature lower than forty-five degrees (45°) Fahrenheit shall be rejected for sale, except for sale for manufacturing purposes, or for animal consumption. The director of the department of agriculture shall notify the producer of any such milk of the fact of such rejection for sale except for manufacturing purposes or for animal consumption, and such producer shall be allowed a reasonable time within which to repossess such milk and dispose of the same for manufacturing purposes or

for animal consumption. If such improperly cooled milk has not been repossessed within the reasonable time allowed, the director of the department of agriculture may seize, confiscate and destroy the same.

**History.** § 2, p. 300; am. 1974, ch. 23, § 30, p. 633; am. I.C., § 37-317, as added by 1957, ch. 167, 1992, ch. 93, § 8, p. 295.

#### STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101. 1911, ch. 190, § 17, p. 630; reen. C.L. 65:54; C.S., § 1721; I.C.A., § 36-417, was repealed by S.L. 1955, ch. 176, § 12, p. 357.

**Prior Laws.**

Former § 37-317, which comprised S.L.

**37-318. Milk kept near insanitary premises. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised S.L. 1911, ch. 190, § 18, p. 630; compiled and reen. C.L. 65:55; C.S., § 1722; I.C.A., § 36-418, was repealed by S.L. 1955, ch. 176, § 13, p. 357.

**37-319. Skim milk — When salable. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

This section, comprising S.L. 1911, ch. 190, § 19, p. 630; reen. C.L. 65:56; C.S., § 1723; I.C.A., § 36-419; am. 1955, ch. 176, § 14, p. 357; am. 1957, ch. 167, § 3, p. 300, was repealed by S.L. 1967, ch. 54, § 8.

**37-320. Skimmed milk — Standard. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

This section, comprising S.L. 1911, ch. 190, § 20, p. 630; reen. C.L. 65:57; C.S., § 1724; I.C.A., § 36-420; am. 1955, ch. 176, § 15, p. 357; am. 1957, ch. 167, § 4, p. 300, was repealed by S.L. 1967, ch. 54, § 9.

**37-321. Skim milk — Manufacturers may handle wholesale. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

This section, comprising S.L. 1911, ch. 190, § 21, p. 631; reen. C.L. 65:58; C.S., § 1725; I.C.A., § 36-421; am. 1955, ch. 176, § 16, p. 357, was repealed by S.L. 1967, ch. 54, § 10.

**37-322. Standard for cream.** — No person, firm or corporation shall keep, sell or offer for sale or have in his or their possession with intent to sell, any cream to which any foreign substance has been added or containing less than eighteen per cent (18%) butter fat, and when sold to any person, firm or corporation, must be truly represented as to being "coffee" or "whipping cream," with an acidity not greater than twenty-five hundredths

of one per cent (.25%). The term "cream" means that portion of milk representing milk fat which rises to the surface of milk standing, or is separated from it by centrifugal force, and which is fresh and clean.

**History.**

1911, ch. 190, § 22, p. 631; reen. C.L. 65:59;  
C.S., § 1726; I.C.A., § 36-422.

**STATUTORY NOTES****Cross References.**

Penalty for violation hereof, § 37-324.

**37-323. Weight of milk. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

§ 1727; I.C.A., § 36-423, was repealed by S.L. 1955, ch. 176, § 17, p. 357.  
This section, which comprised S.L. 1911, ch. 190, § 23, p. 631; reen. C.L. 65:60; C.S.,

**37-324. Penalty for violations.** — Any person or persons, corporation or corporations violating, or who shall fail to comply with the provisions of sections 37-301 through 37-323, Idaho Code, or any part, provision or section thereof, shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not less than ten dollars (\$10.00) and not exceeding three hundred dollars (\$300), or by imprisonment in the county jail for a period not exceeding six (6) months, or both such fine and imprisonment.

**History.**

1911, ch. 190, § 24, p. 631; reen. C.L. 65:61; C.S., § 1728; I.C.A., § 36-424; am. 1992, ch.

93, § 9, p. 295.

**STATUTORY NOTES****Cross References.**

Penalty for selling milk from diseased animal, § 25-213.

**37-325. Reports by dairies, creameries and cheese factories.** — The department of agriculture shall furnish blanks to all proprietors or managers of creameries, cheese factories or milk dairies that ship milk, and all vendors and peddlers of milk and dairy goods handled, and all owners or managers of such creameries and cheese factories, and all milk dairies and all milk vendors, or milk peddlers shall fill out the blanks, giving a full and accurate report of the business done during the year, and send them to the department of agriculture before the first day of November of each year. Every person or corporation who shall engage in the business of purchasing or dealing in milk shall attach in a permanent manner to each can furnished by him or the producer, a tag containing in plain figures a correct statement of the capacity thereof. Any neglect or failure or false statement on the part of the proprietor or manager of such creamery, cheese factory, dairy or milk vendor or milk peddler, shall be considered a misdemeanor.

**History.**

1905, p. 54, § 12; reen. R.C., § 1146; am. C.S., § 1729; I.C.A., § 36-425; am. 1955, ch. 147, § 1, p. 289.  
 1909, p. 231, § 1, subd. 1146; reen. C.L. 65:62;

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

Penalty for violation of section, § 37-330.

**37-326. Standards for dairy products.** — All milk or cream utilized in the manufacture of dairy products and all manufactured dairy products produced, distributed, offered for sale, or sold in Idaho shall meet the requirements established by title 37, Idaho Code, of federal law or rules or regulations promulgated or adopted pursuant to state or federal law.

**History.**

1905, p. 54, § 11; reen. R.C., § 1127; reen. C.L. 65:63; C.S., § 1730; I.C.A., § 36-426; am.

1986, ch. 101, § 1, p. 281.

**37-327. Sale of cheese containing foreign substances unlawful.**  
**[Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1905, p. 54, § 14; reen. R.C. § 1128; reen. C.L. 65:64; C.S., § 1731; I.C.A., § 36-427, was repealed by S.L. 1986, ch. 101, § 2.

**37-328. Fraudulent sale of imitation butter unlawful — Regulations pertaining to sale of colored oleomargarine or margarine — Misadvertising of oleomargarine or margarine unlawful.** [Repealed.]

**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1885, p. 61, § 1; 1899, p. 393, §§ 3, 4; R.S. & R.C., § 6917; reen. C.L. 65:65; C.S., § 1732; I.C.A., § 36-428; am. 1951, ch. 195, § 3, p. 416, was repealed by S.L. 1996, ch. 84, § 1, effective July 1, 1996.

**37-329. Use of imitation butter in eating houses — Required to post notices.** [Repealed.]

**STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 37-329, as added by 1951, ch. 195, § 7, p. 416, was repealed by S.L. 1996, ch. 84, § 1, effective July 1, 1996.

**37-330. Penalty for violating sections 37-325 through 37-329.** — Any person, firm, corporation or other organization, foreign or domestic, or any officer, agent or receiver of any firm, corporation or other organization or any member of the same, or any individual, violating any of the provisions of sections 37-327 [37-325] through 37-329[, Idaho Code], shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a

fine of not less than \$100.00 nor more than \$500.00 for each offense or by imprisonment in the county jail not to exceed six (6) months, or by both such fine and imprisonment, and, if a corporation, may have its charter or permit to do business in this state forfeited.

**History.**

1927, ch. 28, § 1, p. 31; I.C.A., § 36-430;  
am. 1955, ch. 147, § 2, p. 289.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed section reference "37-325" was inserted by the compiler in order to make the text of the law conform to the title of the amending act and the section heading.

The second bracketed insertion was added by the compiler to conform to the statutory citation style.

**37-331. Process butter — Restrictions on sale. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised 1905, p. 54, § 15; reen. R.C., § 1130; reen. C.L. 65:67; C.S., § 1734; I.C.A., § 36-431, was repealed by S.L. 1996, ch. 84, § 1, effective July 1, 1996.

**37-332. Butter and whey butter — Definitions and qualities. —** Butter is the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Butter shall be clean and non-rancid and shall contain not less than eighty per cent (80%) of butter fat. Whey butter or whey cream butter is the food product made by gathering the fat of fresh or ripened whey cream separated from cheese whey and formed into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Whey butter shall be clean and nonrancid [non-rancid] and shall contain not less than eighty per cent (80%) butter fat. The term butter includes whey butter and whey cream butter.

**History.**

1905, p. 54, § 19; reen. R.C., § 1131; reen. C.L. 65:68; C.S., § 1735; S.L. 1929, ch. 65, § 1, p. 95; I.C.A., § 36-432; am. 1937, ch. 107, § 2, p. 160; am. 1988, ch. 161, § 1, p. 291.

**STATUTORY NOTES**

**Compiler's Notes.**

The bracketed word "non-rancid" in the fourth sentence was inserted by the compiler.

**37-332a. Butter grades. —** The official state consumer grades for butter sold or distributed within this state shall be "grade AA," "grade A," "grade B" and "undergrade". "Grade AA" butter is butter scoring not less than 93. "Grade A" butter is butter scoring 92. "Grade B" butter is butter scoring 90 or 91. "Undergrade" butter is butter scoring less than 90. United

States AA, A, and B grades and emblems of butter shall be accepted in lieu of the corresponding Idaho AA, A, and B grades and emblems of butter, but all United States grades of butter below B shall, for the purpose of this section, correspond to Idaho "undergrade" butter. It is hereby declared to be unlawful to sell, or offer for sale any butter within the state of Idaho unless the wrappers and containers in which said butter is packaged are conspicuously labeled as to grades. Any butter that scores less than 90 and is sold or offered for sale within the state of Idaho must be conspicuously labeled with the words "undergrade butter" upon the wrappers and container in which said butter is packaged.

**History.**

I.C., § 37-332a, as added by 1955, ch. 258, § 1, p. 598; am. 1957, ch. 75, § 1, p. 122; am.

1959, ch. 54, § 1, p. 112; am. 1988, ch. 161,

§ 2, p. 291.

**37-332b. Improperly graded butter — Sale unlawful — Grade emblem — Exception.** — It shall be unlawful for any person to sell, offer or expose for sale, or to distribute, within this state to any consumer, or to any retailer, including among others hotels and restaurants, any butter not properly graded by a butter grader licensed under this act and labeled according to section 37-332a, Idaho Code. The official state consumer grades shall be designated by an official grade emblem the design of which shall be prescribed by the state department of agriculture, and said emblem shall be used in designating butter grades only in accordance with regulations of the state department of agriculture governing the manner of such use. Graded butter imported into this state, and otherwise meeting all of the requirements of section 37-332a, Idaho Code, is not required to be designated with said grade emblem. Nothing contained in this act shall be construed to prevent a producer of cream from manufacturing into butter any cream produced by his own herd, provided it shall not exceed eighty (80) pounds in any calendar month, or from selling the same to consumers or retailers or to prevent the resale of such butter by such retailers.

**History.**

I.C., § 37-332b, as added by 1955, ch. 258, § 2, p. 598; am. 1959, ch. 54, § 2, p. 112.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

258, which is compiled as §§ 37-332a to 37-332h.

**Compiler's Notes.**

The words "this act" refer to S.L. 1955, ch.

**37-332c. Butter graders — Employment — Notice to department — Chief grader — Responsibility of graders — Change of graders — Notice to department — Responsibility of manufacturer for wrapper — Revocation of privilege of using grade emblem.** — Each butter manufacturer or butter distributor selling or distributing butter to any consumer or retailer shall maintain one (1) or more butter graders licensed as such under this act, and shall file with the state department of

agriculture the name and address of each such butter grader maintained by it, and if more than one (1) such grader is maintained shall designate one (1) thereof as its chief grader. The butter grader, or if more than one (1) grader is maintained, then the chief grader, shall be responsible for the correct grading and grade labeling, as required under this act, of all butter marketed or distributed to any consumer or retailer by that butter manufacturer or butter distributor within this state during that grader's employment as such. Any change of butter grader or chief grader shall immediately be reported in writing by the employer to the department. Each such chief grader shall be responsible for the correct grading and labeling of butter by all other graders maintained by that manufacturer or distributor and the license of such chief grader shall be subject to revocation or suspension by reason of any mislabeling or other violation of this act by any such other grader.

Provided, further, that any manufacturer or distributor of butter, who or which wraps or places any butter in any wrapper or container having the grade marked thereon, or who or which shall mark the grade on any wrapper or container after butter is placed therein, shall likewise be responsible for the correct grading and grade labeling of such butter, and, in case any such manufacturer or distributor of butter shall fail to properly label any butter, the privilege of such manufacturer or distributor of butter of using the "grade AA," "grade A" or "grade B" emblem established by the state of Idaho to designate butter of that grade, may be revoked or suspended by the state department of agriculture; in which case the provisions of the department of agriculture statute in reference to the revocation or suspension of licenses shall apply to the revocation or suspension of the privilege of using the state "grade AA," "grade A" or "grade B" emblem for butter and in this respect such privilege shall be considered as being a license. Any manufacturer or distributor of butter whose privilege of using the state "grade AA," "grade A" or "grade B" emblem for butter grades has been suspended or revoked, who or which shall continue to use said "grade AA," "grade A" or "grade B" emblem shall be guilty of a violation of this act. The state department of agriculture, when it is satisfied that said emblems will be properly used, may in writing withdraw the suspension or revocation of such privilege.

#### History.

I.C., § 37-332c, as added by 1955, ch. 258,  
§ 3, p. 598; am. 1959, ch. 54, § 3, p. 112.

#### STATUTORY NOTES

**Cross References.** Department of agriculture, § 22-101 et seq. 258, which is compiled as §§ 37-332a to 37-332h.

#### Compiler's Notes.

The words "this act" refer to S.L. 1955, ch.

**37-332d. Licensing of butter graders — Examination — Duration — Fees.** — A butter grading license shall be issued by the state department of agriculture to each individual person who shall apply therefor in writing

and pass satisfactorily and in person a reasonable examination, including actual demonstration of abilities and qualifications to grade butter in accordance with the official grades and standards prescribed by and under this act. Such license shall not be transferable, and unless sooner revoked shall be valid for the calendar year for which issued. There shall be paid to the state department of agriculture as a condition precedent to the issuance or renewal of such license an annual license fee of ten dollars (\$10.00).

**History.**

I.C., § 37-332d, as added by 1955, ch. 258,  
§ 4, p. 598; am. 1990, ch. 411, § 1, p. 1139.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq. 258, which is compiled as §§ 37-332a to 37-

332h.

**Compiler's Notes.**

The words "this act" refer to S.L. 1955, ch.

**37-332e. Revocation or suspension of license.** — Any license issued under this act may be revoked or suspended, by the state department of agriculture in the event the department shall find, after investigation and notice to and opportunity for the licensee to be heard, that the licensee has violated or participated in any violation of this act or any applicable standard of sanitation prescribed by or under any other law of this state; provided, however, that in the event of court conviction of a licensee for wilful violation of this act the department shall summarily suspend the license of such licensee for a period of 30 days, and in the event of a second such conviction shall summarily and permanently revoke such license, and in the event of any such court conviction, no procedure on the part of the department shall be required for the revocation of such license.

**History.**

I.C., § 37-332e, as added by 1955, ch. 258,  
§ 5, p. 598.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

258, which is compiled as §§ 37-332a to 37-  
332h.

**Compiler's Notes.**

The words "this act" refer to S.L. 1955, ch.

**37-332f. Enforcement of act by department — Rules and regulations.** — The state department of agriculture is hereby charged with the administration and enforcement of the provisions of this act and hereby is empowered to promulgate and enforce such reasonable rules and regulations, not inconsistent with this act, as it may find to be necessary for that purpose.

**History.**

I.C., § 37-332f, as added by 1955, ch. 258,  
§ 6, p. 598.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

258, which is compiled as §§ 37-332a to 37-332h.

**Compiler's Notes.**

The words "this act" refer to S.L. 1955, ch.

**37-332g. Violations of statute — Misdemeanor — Punishment. —** Violation of any provision of this act or of any rule or regulation duly promulgated hereunder shall constitute a misdemeanor.

**History.**

I.C., § 37-332g, as added by 1955, ch. 258,  
§ 7, p. 598.

**STATUTORY NOTES****Cross References.**

Penalty provisions, § 37-335.

258, which is compiled as §§ 37-332a to 37-332h.

**Compiler's Notes.**

The words "this act" refer to S.L. 1955, ch.

**37-332h. License fees, disposition, use. —** All fees and fines collected under the provisions of this act shall be credited and paid into the dairy industry and inspection fund [account].

**History.**

I.C., § 37-332h, as added by 1955, ch. 258,  
§ 8, p. 598.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion was added by the compiler to supply the correct name of the referenced account. See § 37-407.

The words "this act" refer to S.L. 1955, ch. 258, which is compiled as §§ 37-332a to 37-332h.

**37-333. Weight of butter. —** Each package of butter offered or exposed for sale shall have stamped upon the wrapper or package, the actual number of ounces contained in said package. Each square or roll of butter kept, exposed or offered for sale in the state of Idaho, which is represented to contain one (1) pound in weight, shall contain full sixteen (16) ounces; and each square or roll of butter kept or offered for sale in the state of Idaho, which shall be represented to contain two (2) pounds in weight, shall contain full thirty-two (32) ounces.

**History.**

1905, p. 54, § 20; reen. R.C., § 1132; reen.  
C.L. 65:69; C.S., § 1736; I.C.A., § 36-433.

## STATUTORY NOTES

**Cross References.**

Butter, sale weight, § 71-237.

**37-334. Advertising substitutes for dairy products.** — It shall be unlawful for any person, firm or corporation to make use of the words, milk, cream, butter, cheese, creamery, dairy, churn, cow, the name of any dairy breed or any pictorial representation of any of these terms in connection with the sale, offering for sale or advertisement of any substance designed to be used as a so-called substitute for milk, cheese, butter or any other dairy products.

**History.**

1921, ch. 149, § 1, p. 341; I.C.A., § 36-434.

**37-334a. Food products made to resemble dairy products — Definitions.** — As used in sections 37-334, 37-334a, 37-334b, 37-334c, 37-334d, 37-334e and 37-334f, Idaho Code:

(1) "Dairy product" includes:

- (a) Milk, skim milk, milk fat, cream, sour cream, lowfat milk and nonfat milk used in fluid, concentrated or dry form.
  - (b) Cheese. All varieties including asiago, blue, brick, caciocavallo, cheddar, colby, cook cheese, cottage, cream, washed curd, edam, gammelost, gorgonzola, gouda, granular and grated, gruyere, hard, limburger, monterey, monterey jack, mozzarella, scamorze, muenster, neufchatel, nuworld, parmesan, reggiano, pasteurized, blended and processed cheeses, pasteurized cheese spreads, provolone, pasta filata, romano, roquefort, samsoe, sapsago, semi-soft and skim milk, spiced, swiss and emmentaler as described in 21 CFR, part 133.
  - (c) Butter as defined in section 37-332, Idaho Code.
  - (d) Ice cream, frozen custard, ice milk, sherbet as defined in 21 CFR, part 135, frozen yogurt dessert mix, frozen yogurt dessert, frozen lowfat and nonfat yogurt dessert, dietetic or dietary frozen dessert, lowfat or nonfat frozen dairy dessert, and milk shake base as defined in state department of agriculture dairy regulations.
  - (e) Any manufactured food which:
    1. Uses milk or a milk ingredient as the principal or characterizing constituent of the food product;
    2. Does not contain ingredients added for the purpose of replacing milk or milk ingredients;
    3. Does not contain milk-derived ingredients at levels in excess of those permitted in similar standardized dairy products;
    4. Does not contain any vegetable-derived ingredients unless the ingredients are used as carriers or function as stabilizers or emulsifiers; and
    5. Has no standard of identity recognized by any federal or state of Idaho law or regulation as a dairy product.
- (2) "Milk ingredient" includes milk, skim milk, milk fat, cream, sour cream, lowfat milk and nonfat milk used in fluid, concentrated or dry form.

(3) "Milk derived ingredient" includes buttermilk, whey, modified whey products, casein, lactose, lactalbumins and lactoglobulins used in fluid, concentrated or dry forms.

(4) "Artificial dairy product" means any food manufactured or labeled so as to purport to resemble the identity, intended use, composition, physical and sensory properties of a dairy product as defined in subsection (1) of this section.

(5) For the purpose and within the meaning of this act, an "artificial dairy product" shall not include a "dairy product" as defined in section 37-334a(1), Idaho Code, or any other manufactured food which has a federal or state of Idaho standard of identity as a food product.

(a) Food products made to resemble those food products other than dairy products in section 37-334a(5), Idaho Code, are exempt from the labeling requirements in sections 37-334b and 37-334c, Idaho Code, and regulations adopted pursuant thereto.

#### **History.**

I.C., § 37-334a, as added by 1985, ch. 61, § 1, p. 121; am. 1987, ch. 7, § 1, p. 8; am.

1992, ch. 93, § 10, p. 295.

#### **STATUTORY NOTES**

##### **Cross References.**

Department of agriculture, § 22-101 et seq.

to S.L. 1987, ch. 7, which is compiled as §§ 37-334a, 37-334d, 37-334e, 37-335, and 37-338.

##### **Compiler's Notes.**

Sections 37-334b, 37-334c, and 37-334f, referred to in this section, were repealed.

The words "this act", in subsection (5), refer

The 1987 amendment by chapter 7 added subsection (5) and paragraph (a), but it contained no paragraph (b).

#### **37-334b. Label requirements for food products made to resemble dairy products. [Repealed.]**

#### **STATUTORY NOTES**

##### **Prior Laws.**

Another former § 37-334b, which comprised I.C., § 37-334b, as added by 1985, ch. 61, § 2, p. 121, was repealed by S.L. 1987, ch. 7, § 2.

##### **Compiler's Notes.**

This section, which comprised I.C., § 37-334b, as added by 1987, ch. 7, § 3, p. 8, was repealed by S.L. 1996, ch. 86, § 1, effective July 1, 1996.

#### **37-334c. Ingredient and nutritional values. [Repealed.]**

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

This section, which comprised I.C., § 37-334c, as added by 1985, ch. 61, § 3, p. 121;

am. 1987, ch. 7, § 4, p. 8, was repealed by S.L. 1996, ch. 86, § 1, effective July 1, 1996.

#### **37-334d. Quality standards for food products made to resemble dairy products. — Quality standards (e.g., bacteria, coliform, etc.) for food products made to resemble dairy products shall be at least the equivalent of the established quality standards of the dairy product resembled.**

**History.**

I.C., § 37-334d, as added by 1987, ch. 7,  
§ 5, p. 8.

**STATUTORY NOTES****Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**37-334e. License requirements for manufacturers of food products made to resemble dairy products.** — (1) It is unlawful to engage in the manufacture of food products resembling dairy products, unless a license for the current calendar year for each separate plant or place used for such business is issued by the director of the Idaho department of agriculture.

(2) Applications for a license shall be in the form which shall be prescribed by the director of the Idaho department of agriculture.

(3) The application shall be accompanied by a fee of one hundred dollars (\$100). The fee shall be prorated on a monthly basis for any licensee that commences operations after the first quarter in any calendar year whether or not such plant was licensed during the preceding calendar year.

(4) Plant licenses are not required if the plant is located in a state other than Idaho.

(5) The director of the Idaho department of agriculture shall issue to each applicant that meets the requirements of this section, a license which entitles the applicant to manufacture, sell, or distribute food products resembling dairy products for the then current calendar year for which the license is issued, unless the license is sooner revoked or suspended.

(6) The license shall expire at the end of each calendar year.

(7) It is unlawful for any person to sell any food product resembling dairy products which has been produced in a plant that is in an unsanitary condition.

(8) The manufacture of food products resembling dairy products under unhealthy or unsanitary conditions or which violate the provisions of sections 37-334 through 37-335, Idaho Code, and regulations adopted pursuant thereto, shall be grounds for revocation or suspension of such license.

**History.**

I.C., § 37-334e, as added by 1987, ch. 7,  
§ 6, p. 8.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101

Penalty for violation, § 37-335.

**37-334f. Registration requirements for food products made to resemble dairy products. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised I.C., § 37-334f, as added by 1987, ch. 7, § 7, p. 8; am.

1990, ch. 213, § 31, p. 480, was repealed by S.L. 1996, ch. 86, § 1, effective July 1, 1996.

**37-335. Penalty — Enforcement.** — (1) Any person, firm or corporation, violating the provisions of sections 37-331 through 37-334f, Idaho Code, or any part or provision of any of said sections, shall be guilty of a misdemeanor and punishable by a fine not exceeding two hundred dollars (\$200) or imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

(2) In addition, any products not in compliance with the provisions of sections 37-334 through 37-334f, Idaho Code, shall be subject to seizure and disposition in accordance with an appropriate court order or rule adopted by the director of the department of agriculture.

**History.**

1921, ch. 149, § 2, p. 341; I.C.A., § 36-435; am. 1937, ch. 107, § 3, p. 160; am. 1985, ch.

61, § 4, p. 121; am. 1987, ch. 7, § 8, p. 8.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

tions (1) and (2), was repealed by S.L. 1996, Chapter 7.

**Compiler's Notes.**

Section 37-334f, referred to in both subsec-

**37-336. Oleomargarine — Purchase for public institutions unlawful — Exception. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1931, ch. 66, § 1, p. 115; I.C.A., § 36-436; am. 1967, ch.

300, § 1, p. 852, was repealed by S.L. 1996, ch. 84, § 1, effective July 1, 1996.

**37-337. Penalty for violating section 37-336. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1931, ch. 66,

§ 2, p. 115; I.C.A., § 36-437, was repealed by S.L. 1996, ch. 84, § 1, effective July 1, 1996.

**37-338. Department of agriculture to administer act.** — The department of agriculture is charged with the responsibility of administration and enforcement of sections 37-325 through 37-337, Idaho Code, and hereby is empowered to promulgate and enforce such reasonable rules and regulations, not inconsistent with these sections, as found to be necessary for that purpose.

**History.**

I.C., § 37-338, as added by 1955, ch. 147,  
§ 3, p. 289; am. 1987, ch. 7, § 9, p. 8.

**STATUTORY NOTES****Effective Dates.**

Section 10 of S.L. 1987, ch. 7 declared an emergency. Approved February 17, 1987.

**37-339. Breed name of dairy cattle carried on label of milk and milk products — Policy.** — It is hereby declared to be the policy of the legislature of the state of Idaho that the public interest requires that all milk or the product thereof sold under a label containing the breed name of a nationally recognized breed organization of dairy cattle be milk obtained exclusively from dairy herds of that breed.

**History.**

1959, ch. 282, § 1, p. 593.

**37-340. Use of breed name on label unlawful unless derived exclusively from registered dairy herds — Permit.** — It is hereby declared to be unlawful for any person, association or corporation engaged in manufacturing, processing, packaging, canning, or bottling of milk or any product thereof for sale, to label, imprint, brand or mark the container in which said milk or any product thereof is sold with the breed name of a nationally recognized breed organization of dairy cattle such as Jersey, Guernsey, Holstein, Ayrshire, Brown Swiss or Shorthorn unless all milk or the product thereof sold or offered for sale under said label, imprint, brand or mark shall be derived exclusively from dairy herds in which the females are registered with the national breed organization of the breed name used or are indistinguishable in appearance and characteristics from animals registered with the national breed organization of said breed name, and unless a permit allowing the use of said breed name is first obtained from the department of agriculture. Any person, association or corporation obtaining a permit shall first give his consent to reasonable inspections of his premises by the department for purposes of enforcement of this act.

**History.**

1959, ch. 282, § 2, p. 593; am. 1992, ch. 93,  
§ 11, p. 295.

**STATUTORY NOTES**

**Cross References.** Department of agriculture, § 22-101 et seq. **282**, which is compiled as §§ 37-339 to 37-343.

**Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch.

**37-341. Administration and enforcement of act.** — The director of the department of agriculture is charged with the responsibility of administering and enforcing this act.

**History.**

1959, ch. 282, § 3, p. 593; am. 1974, ch. 23, § 31, p. 633; am. 1992, ch. 93, § 12, p. 295.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

282, which is compiled as §§ 37-339 to 37-343.

**Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch.

**37-342. Violations of §§ 37-339 through 37-343 a misdemeanor.** — The violation of any section of this act shall constitute a misdemeanor.

**History.**

1959, ch. 282, § 4, p. 593.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch.

282, which is compiled as §§ 37-339 to 37-

343.

**37-343. Injunction proceedings additional remedy for violations.**

— In addition to the remedy prescribed in the foregoing section for the violation of the provisions of this act, any person, association or corporation violating, or threatening to violate, any of the provisions of this act may be enjoined from violating the same; such injunction proceedings may be instituted by the director of the department of agriculture as plaintiff, whether or not criminal proceedings have been brought against the same defendant, and the attorney general or prosecuting attorney of the county where the violation or threatened violation of this act has occurred, on demand of the director of the department of agriculture, shall represent the director of the department of agriculture in such proceedings. In any such proceedings no bond shall be required of the plaintiff.

**History.**

1959, ch. 282, § 5, p. 593; am. 1974, ch. 23, § 32, p. 633; am. 1992, ch. 93, § 13, p. 295.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

**Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch. 282, which is compiled as §§ 37-339 to 37-343.

Section 32 of S.L. 1992, ch. 93 provided that the act should be in full force and effect on and after July 1, 1993.

## CHAPTER 4

### SANITARY INSPECTION OF DAIRY PRODUCTS

**SECTION.**

- 37-401. Inspections, examinations and tests by department of agriculture — Dairy farms — Nutrient management plans required — Certain evidence required.  
37-402. Standards, rules and regulations.  
37-403. Basis for issuance or revocation of licenses or permits.  
37-404. Coloring when unfit for human consumption.  
37-405. Department may make rules and orders.

**SECTION.**

- 37-406. Department to cooperate with other agencies.  
37-407. Fees and assessments to be collected from dairy processors.  
37-408. Penalty for violations.  
37-409. Milk haulers and tanks — Definitions.  
37-410. Standards for holding and cooling tanks.  
37-411. Standards for transportation tanks.  
37-412. Standards for milk haulers.  
37-413. Standards for quality control of milk samples.

**37-401. Inspections, examinations and tests by department of agriculture — Dairy farms — Nutrient management plans required — Certain evidence required.** — (1) The director of the department of agriculture is hereby authorized and directed to designate any agent to inspect, examine and test any or all dairy products in accordance with rules as the department may prescribe; and to ascertain and certify the grade, classification, quality or sanitary condition thereof and other pertinent facts as the department may require. The director or agent of the department of agriculture of the state of Idaho shall make sanitary inspection of milk, cream, butter and dairy products of any kind whatsoever, intended for human consumption, and of containers, utensils, equipment, buildings, premises or anything whatsoever employed in the production, handling, storing, processing or manufacturing of dairy products or that would affect the purity of the products. Inspections, examinations and tests shall be made to meet the requirements of the laws of the state and of the United States for the sale of the products or their transportation in both intrastate and interstate commerce. Any agent designated by the director to make inspections shall have the right for that purpose to enter any premises and buildings where milk, cream, butter or dairy products shall be produced, stored, processed or manufactured.

(2) Acting in accord with rules of the department, the director or agent of the department shall review plans and specifications for construction of new, modified or expanded waste systems and inspect any dairy farm to ascertain and certify sanitary conditions, waste systems and milk quality.

(3) The director or agent shall issue a permit authorizing the sale of milk for human consumption to all dairy farms that meet the requirements of this chapter, and rules promulgated pursuant to this chapter.

(4) All dairy farms shall have a nutrient management plan approved by the department. The nutrient management plan shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator. Nutrient management plans submitted to the department by the dairy farm shall include the names and addresses of each recipient of that dairy farm's livestock waste, the number of acres to which the livestock waste is applied and the amount of such livestock waste received by each recipient. The

information provided in this subsection shall be available to the county in which the dairy farm, or the land upon which the livestock waste is applied, is located. If livestock waste is converted to compost before it leaves the dairy farm, only the first recipient of the compost must be listed in the nutrient management plan as a recipient of livestock waste from the dairy farm. Existing dairy farms shall submit a nutrient management plan to the department on or before July 1, 2001.

(5) Any new dairy farms or dairy farms that change owners or operators shall have an approved nutrient management plan on file with the department prior to the issuance of the milk permit for that dairy. The nutrient management plan shall be implemented upon approval of the plan by the department.

(6) The director or his agent may issue a permit to sell milk for human consumption to a new or expanding dairy farm only upon presentation to the director by the new or expanding dairy farm of:

(a) A certified letter, supplied by the board of county commissioners, certifying the new or expanding dairy farm's compliance with applicable county livestock ordinances; and

(b) Evidence that a valid water right exists to supply adequate water for the new or expanding dairy farm; or

(c) A copy of an application for a permit to appropriate water that has been filed with the Idaho department of water resources and which, if approved, will supply adequate water for the dairy farm; or

(d) A copy of an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources and which, if approved, will supply adequate water for the dairy farm.

(7) As used in this section:

(a) "Animal units" shall be as defined in rule by the director.

(b) "Expanding dairy farm" means an existing, legally permitted dairy farm that increases, or applies to increase, its existing animal units beyond the number for which it is permitted under applicable county livestock ordinances or increases, or applies to increase, the waste containment system.

(c) "New dairy farm" means a dairy farm constructed after the effective date of this act.

(8) The nutrient management plan, and all information generated by the dairy as a result of such plan, shall be deemed to be trade secrets, production records or other proprietary information, shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

**History.**

1943, ch. 85, § 1, p. 171; am. 1949, ch. 183, § 1, p. 385; am. 1974, ch. 18, § 248, p. 364; am. 1992, ch. 93, § 14, p. 293; am. 1996, ch. 81, § 1, p. 264; am. 2000, ch. 188, § 1, p. 464; am. 2001, ch. 387, § 1, p. 1365; am. 2001, ch. 388, § 1, p. 1366; am. 2011, ch. 232, § 1, p. 634.

**STATUTORY NOTES**

**Cross References.**

Department of water resources, § 67-3301.

Director of department of agriculture, § 22-

101.

**Amendments.**

This section was amended by two 2001 acts — ch. 387, § 1, effective July 1, 2001 and ch. 388, § 1, effective April 11, 2001, which contained a minor conflict that has been resolved and have been compiled together.

The 2001 amendment, by ch. 387, § 1, added the subsection designations (1) to (4) and added the present second, third, fourth, fifth and sixth sentences in subsection (3).

The 2001 amendment, by ch. 388, § 1, in the head field, added "Certain evidence required" following "management plans required"; added the subsections designations (1) to (3) and added subsections (4) through (5)(c).

The 2011 amendment, by ch. 232, corrected the designation problems caused by the mul-

tiple 2001 amendments and added subsection (8).

**Compiler's Notes.**

The phrase "effective date of this act", at the end of subdivision (7)(c), refers to the effective date of S.L. 2001, ch. 388, which was April 11, 2001.

**Effective Dates.**

Section 2 of S.L. 2000, ch. 188 declared an emergency. Approved April 4, 2000.

Section 2 of S.L. 2001, ch. 388 declared an emergency. Approved April 11, 2001.

Section 2 of S.L. 2011, ch. 232 declared an emergency. Approved April 6, 2011.

**JUDICIAL DECISIONS****Local Regulation.**

Where a dairymen's association and a cattle association filed a complaint challenging the constitutionality of Gooding County, Idaho, Ordinance No. 90, which regulated water quality at confined animal feeding operations (CAFOs), the supreme court held that Ordinance 90 did not violate Idaho Const., Art. XII, § 2. While § 42-101 provided that control over the appropriation of water was

vested in the state, local governing board's had the authority under § 67-6537 to consider the effect any proposed amendments to the comprehensive plan would have on the water quantity in the area; therefore, regulation of CAFOs by the local government was permitted by this section. Idaho Dairymen's Ass'n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

**OPINIONS OF ATTORNEY GENERAL**

The Idaho department of agriculture may not allow a dairyman, whose permit to sell milk for human consumption is temporarily revoked, unfettered discretion as to which charitable organization forfeited funds are donated. OAG 00-39.

Because the legislature has authorized both the counties and the state to regulate confined

animal feeding operations (CAFOs), and because these authorities overlap, it is unlikely that a court would conclude the state has completely occupied the field of CAFO regulation or that state law provides an exclusive regulatory program that preempts all local regulation. OAG 08-01.

**37-402. Standards, rules and regulations.** — The following standards, rules and regulations concerning the sanitation of milk and cream are hereby established:

1. The term "processor" as used herein shall mean any individual, partnership, association, or corporation doing business in the state of Idaho that produces, purchases, obtains or uses in the manufacture of butter, cheese, evaporated milk, frozen desserts, frozen novelties, edible dry milk, or other dairy products. The term "processor" shall not include any individual, partnership, association or corporation which produces, purchases, obtains, or uses milk or cream for his or its own consumption. The term "producer" as used in this act shall mean any person, firm or corporation who owns or controls one or more cows a part or all of the milk from which is sold or offered for sale to a processor.

2. No processor shall purchase or obtain in any manner, or use in any manner, for the sale or manufacture of any of the above named dairy products any unacceptable milk or cream as herein defined.

3. The processor shall, for the purpose of determining the acceptability or

unacceptability of milk or cream, cause all milk or cream to be tested and graded according to the standards herein defined before purchase, acquisition, or use in any manner, provided, however, that where the processor customarily purchases the milk or cream of any person regularly engaged in the production thereof, the processor is required to test milk and cream of such producer not less than once each month by the standard sediment test approved bacteria test and an approved mastitic test, or such other test as may be prescribed by the director of the department of agriculture and when milk or cream from any such producer is found unacceptable as a result of either test, the processor shall thereafter test the milk or cream of such producer daily by the same test until it is found to be acceptable. Each such processor shall retain for at least one (1) year at the place where such milk or cream is received a record of such tests in the form and of the content which shall be prescribed by the department of agriculture and shall exhibit such record at the place where the same is kept whenever requested to do so by the producer or the department and shall permit copies thereof to be taken.

4. Milk or cream is unacceptable which does not meet the standards and comply with the regulations promulgated by the director under this act.

5. Any milk or cream which is unclean, unwholesome or unfit for human consumption, as determined by the department, shall be rejected as unacceptable.

6. When any milk or cream is rejected as unacceptable it shall be the duty of the director or his agent to notify all processors in the immediate area, giving the producer's name and address.

7. Following receipt of such notification no processor shall purchase, obtain or use milk or cream from such producer until notified by the director or his agent that milk or cream from such producer is acceptable or until the milk or cream of such producer has subsequently been found to be acceptable for ten (10) consecutive days after testing the same in the manner hereinabove described.

**History.**

1943, ch. 85, § 2, p. 171; am. 1949, ch. 183, § 2, p. 385; am. 1951, ch. 240, § 1, p. 498; am. 1970, ch. 98, § 1, p. 245; am. 1974, ch. 18, § 249, p. 364; am. 1978, ch. 110, § 1, p. 228; am. 1986, ch. 101, § 3, p. 281.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Compiler's Notes.**

The term "this act" in subsection 1 refers to S.L. 1949, ch. 183, which is codified as §§ 37-

401, 37-402, and 37-404. The term "this act" at the end of subsection 4 refers to S.L. 1970, ch. 98, which is codified as §§ 37-402, 37-407, and 37-408. In both instances, the probable intended reference is to "this chapter", being chapter 4, title 37, Idaho Code.

**37-403. Basis for issuance or revocation of licenses or permits.** — Whenever, under any law of this state or rule, the director of the department of agriculture or any agent is required to inspect dairy farms and dairy waste systems for compliance with rules prescribed by the department, or determine the sanitary condition of anything referred to in section 37-401,

Idaho Code, or the purity of milk, cream, butter, or other dairy products intended for human consumption, the director shall make or cause to be made an examination and inspection and shall report his findings and conclusions. When the issuance or the revoking of any license or permit by the department of agriculture is required to be made after an inspection involving waste systems, milk quality, and sanitary conditions and purity for human consumption of any milk, cream, butter, or other dairy products, the issuance or revocation of license or permit shall be based upon the report or reports so made by the director. The duration of such revocation shall be determined by the director. For violations regarding waste systems the department shall allow the dairy farm's milk to be processed, provided the milk meets quality standards. The value of the milk sold by the violator during the revocation shall be remitted to the county where the violation occurred for deposit in the county current expense fund. The amount remitted to the county current expense fund shall be less processor expenses associated with the procurement of the milk.

**History.** § 250, p. 364; am. 1996, ch. 81, § 2, p. 264;  
1943, ch. 85, § 3, p. 171; am. 1974, ch. 18, am. 2000, ch. 260, § 1, p. 731.

#### STATUTORY NOTES

##### Cross References.

Director of department of agriculture, § 22-101.

##### Effective Dates.

Section 2 of S.L. 2000, ch. 260 declared an emergency. Approved April 12, 2000.

#### OPINIONS OF ATTORNEY GENERAL

The Idaho department of agriculture may not allow a dairyman, whose permit to sell milk for human consumption is temporarily

revoked, unfettered discretion as to which charitable organization forfeited funds are donated. OAG 00-39.

**37-404. Coloring when unfit for human consumption.** — Whenever the director of the department of agriculture or his agent finds any milk, cream or other dairy products unacceptable for human consumption under the foregoing, he shall color the same with a harmless edible dye so that it may thereafter be identified as having been condemned for human consumption.

##### History.

1943, ch. 85, § 4, p. 171; am. 1949, ch. 183, § 3, p. 385; am. 1974, ch. 18, § 251, p. 364.

#### STATUTORY NOTES

##### Cross References.

Director of department of agriculture, § 22-101.

**37-405. Department may make rules and orders.** — The department of agriculture is hereby invested with authority to make rules and

orders as may be necessary or desirable for carrying out its various functions and the intent and purpose of this act.

**History.**

1943, ch. 85, § 5, p. 171; am. 1996, ch. 81,  
§ 3, p. 264.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

section, refers to S.L. 1943, ch. 85, which is compiled as §§ 37-401 to 37-408.

**Compiler's Notes.**

The term "this act", at the end of the

**37-406. Department to cooperate with other agencies.** — The department of agriculture is hereby authorized to advise and assist and to cooperate with the federal government or any of its agencies, other departments, agencies and institutions of this state, counties, school districts, and municipalities, and other public and private welfare agencies, in the exercise of any of the powers and duties of the department.

**History.**

1943, ch. 85, § 6, p. 171.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

**37-407. Fees and assessments to be collected from dairy processors.** — Whenever an inspection of any dairy product is made by the department of agriculture, or whenever permanent or temporary inspectors or employees are used by said department for the purpose of enforcing or promulgating an inspection or sanitary program for any dairy product, the department is authorized to fix, assess and collect or cause to be collected from the dairy processors, fees or assessments for such services when they are performed by such employees or agents of the department, such fees to be on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and the administration of the department of agriculture dairy inspection program; provided, however, that the department shall so adjust the fees to be collected under this section as to meet the expenses necessary for this inspection service only, all of said fees to be used for this purpose alone; and provided further, that in no event shall the fees or assessments exceed four (4) mills per pound of butterfat produced by any dairymen in Idaho or received by processors. All such fees and moneys collected or received by the department, its employees or agents under this act shall be deposited in the "dairy industry and inspection account" which account is hereby created. All moneys coming into said account are hereby appropriated to the department of agriculture to be used in the inspection required by law to be made of the dairy industry and dairy products. The fees and assessments accrued in any given month are due and payable no later than the twentieth day of the following month.

**History.**

1943, ch. 85, § 7, p. 171; am. 1950 (E.S.), ch. 76, § 1, p. 101; am. 1951, ch. 240, § 2, p.

498; am. 1967, ch. 66, § 1, p. 148; am. 1970, ch. 98, § 2, p. 245; am. 1982, ch. 22, § 1, p. 26; am. 1995, ch. 78, § 1, p. 208.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

**Compiler's Notes.**

The term "this act", in the second sentence, refers to S.L. 1943, ch. 85, which is compiled as §§ 37-401 to 37-408.

**Effective Dates.**

Section 3 of S.L. 1951, ch. 240, declared an emergency. Approved March 20, 1951.

**37-408. Penalty for violations.** — Anyone failing to comply with any of the provisions of this chapter or any standards, rules or orders promulgated hereunder shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding two hundred dollars (\$200) or imprisonment in the county jail not to exceed three (3) months, or by both a fine and imprisonment. The director of the department of agriculture may bring civil actions to enjoin violation of this chapter or the standards, rules or orders promulgated thereunder.

**History.**

1943, ch. 85, § 8, p. 171; am. 1970, ch. 98,

§ 3, p. 245; am. 1974, ch. 18, § 252, p. 364; am. 1996, ch. 81, § 4, p. 264.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Effective Dates.**

Section 5 of S.L. 1996, ch. 81 declared an emergency. Approved March 6, 1996.

**JUDICIAL DECISIONS**

**Cited in:** Idaho Dairymen's Ass'n v. Gooding County, 148 Idaho 653, 227 P.3d 907 (2010).

**OPINIONS OF ATTORNEY GENERAL**

The Idaho department of agriculture may not allow a dairyman, whose permit to sell milk for human consumption is temporarily

revoked, unfettered discretion as to which charitable organization forfeited funds are donated. OAG 00-39.

**37-409. Milk haulers and tanks — Definitions.** — As used in this act, unless the context clearly requires otherwise, the following definitions are adopted:

- (1) The term "milk hauler" is the operator of a transportation tank and may be an employee or the owner of the equipment.
- (2) The term "farm tank" is a tank used to cool and/or store milk prior to transportation to the processing plant.
- (3) The terms "transportation tank," "bulk tank" and "feeder tank" mean tanks used to transport milk from a farm to a processing plant.
- (4) The term "chlorine" shall mean chlorine, or other type of sanitizer approved by the director of the department of agriculture.

**History.**

I.C., § [37-409] 37-408, as added by 1961,

ch. 295, § 1, p. 522; am. 1965, ch. 20, § 1, p. 33; am. 1974, ch. 18, § 253, p. 364.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

The words "this act" refer to S.L. 1961, ch. 295, which is compiled as §§ 37-409 to 37-413.

**Compiler's Notes.**

Sections 1 to 5 of S.L. 1961, ch. 295 were enacted as §§ 37-408 to 37-412 but were renumbered as §§ 37-409 to 37-413 as there already was a section compiled as § 37-408.

**Effective Dates.**

Section 2 of S.L. 1965, ch. 20, declared an emergency. Approved February 11, 1965.

**37-410. Standards for holding and cooling tanks.** — The following standards are hereby adopted relating to farm holding and/or cooling tanks:

A. Each producer desiring to install a farm holding and/or cooling tank shall obtain approval from the director of the department of agriculture of the state of Idaho or his duly authorized representative, and shall furnish the following information to said director:

1. Tank make, model, and capacity.

2. A sketch (approximately to scale) of the milk room floor plan showing location of tank, outlet of tank, wall opening for milk conductor tubing, other milk house equipment and access area for tank truck approach.

B. The milk house and/or milk room shall have a concrete floor of smooth finish easily cleanable.

C. Farm tanks and all equipment used in connection therewith shall comply with the Sanitary Standards Symbol Administrative Council, 3A standards in effect at the time of the passage of this act.

D. The farm tank shall be located in the milk room so as to provide not less than thirty-six inches (36") clearance on all working sides of the tank, provided, however, that in the case of producers using tanks at the time of the enactment of this act clearances as specified above may be waived by the director if the producer demonstrates his ability to keep the interior and exterior surfaces of the tank and the walls and floors of the milk house in a clean condition. All tanks shall be located so as to provide at least six (6) inches of clearance between the floor and bottom of tanks, except that a four (4) inch minimum clearance is acceptable if the bottom slopes upward at least six (6) inches in a horizontal distance of twelve (12) inches. Remote compressors which are located in milk rooms shall be so installed as to be easily cleanable. Floor drains shall be trapped and shall not be located under the farm tank.

E. A fixed, properly encased opening not less than six (6) inches above the floor of the milk house or the outside loading platform, whichever is higher, shall be provided in an exterior wall of the milk house on the side closest to the tank outlet to accommodate the milk conductor tubing used to pump the milk from the farm tank to the truck [transportation] tank. Such openings shall not be less than six (6) inches or more than eight (8) inches in size and shall be provided with a flat, tight, self-closing device.

F. When electricity is the motive power for the milk transport tank milk pump, a lock type electrical connection with ground and weatherproof type receptacle located on the outside of the building with a switch box located on the inside of the building shall be provided.

G. Water for washing farm tanks shall be from an approved supply and shall be under pressure. Hoses for washing the milk house and the bulk tank shall be used for no other purpose and be stored on a rack convenient to the bulk tank. An automatic hot water storage tank (pressure type) shall be provided and shall be not less than thirty (30) gallons capacity and equipped with a thermostat capable of maintaining water temperature at least 140° Fahrenheit. Extra capacity, higher temperature, or both shall be provided for CIP installations, off peak heating, and milk house heating or other hot water usages. Gas heaters, if used, shall be properly vented.

H. Adequate evenly distributed artificial light, not placed directly over the tank, shall be provided and shall be so located that cleaning will be easily accomplished. Adequate lighting may be obtained by providing two (2) one hundred fifty (150) watt flood lamps about one (1) foot from the ends of the tank and a one hundred (100) watt bulb over the wash vats.

I. Farm tanks shall be protected from overhead contamination.

J. All outside openings shall be screened and self-closing doors shall open outward.

K. The truck approach shall be properly graded and surfaced to prevent pooling of water at the point of loading. Adequate artificial light shall be provided to illuminate this area to facilitate loading during hours when natural light is insufficient. This area shall be provided with a concrete slab or an asphalt surface of sufficient size to effectively protect the milk conducting hose from contamination.

L. Cleaning and bactericidal treatment shall conform to regulations adopted by the department of agriculture. Farm tanks shall be thoroughly cleaned after each use, and then prior to the next milking exposed to two hundred (200) parts per million (1,000,000) of residual chlorine. In cases where farm tanks are equipped with removable drop pipes, a vat large enough and low enough for the washing and sanitizing of this equipment shall be provided. Chemical sprayers are recommended for sanitizing farm tanks and if utilized, shall be used for no other purpose.

M. Indicating thermometers on all farm tanks shall be kept in proper operating condition. The driver shall possess an accurate approved type thermometer to enable him to check the indicating thermometers of the farm bulk tanks. The department of agriculture, using an approved type thermometer, shall check, periodically, the indicating thermometer on farm bulk tanks to determine its accuracy.

N. Abnormal milk, adulterated milk and milk containing objectionable odors shall not be added to the farm tank. The sampler and/or tester shall check the milk for abnormalities before pumping the milk to the tank truck. The entire supply of milk in the farm tank shall be rejected if such milk is detected.

O. Bulk cooling tanks shall be designed and equipped with refrigeration to permit the cooling of the milk to 40° Fahrenheit or lower within two (2) hours after each milking, and maintain it at 45° Fahrenheit or below until picked up.

P. All steps necessary shall be employed to prevent the contamination of milk handled through bulk farm pick up. This shall pertain to all phases of this type of milk handling. The bulk farm tank and accessories shall be used

for no other purpose than the handling of milk and the operations incident thereto.

**History.**

I.C., § [37-410] 37-409, as added by 1961, ch. 295, § 2, p. 522; 1967, ch. 66, § 2, p. 148;

am. 1974, ch. 18, § 254, p. 364; am. 1976, ch. 359, § 1, p. 1176; am. 1986, ch. 101, § 4, p. 281.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Compiler's Notes.**

Sections 1 to 5 of S.L. 1961, ch. 295 were enacted as §§ 37-408 to 37-412 but were renumbered as §§ 37-409 to 37-413 as there already was a section compiled as § 37-408.

Sanitary standards and accepted practices for the food, beverage, and pharmaceutical industries, once governed by the Sanitary Standards Symbol Administrative Council, referred to in subsection C, are now governed by 3-A Sanitary Standards, Inc. See <http://www.3-a.org>.

The phrases "time of the passage of this act", in subsection C and "time of the enactment of this act" in subsection D, refer to the passage and approval of S.L. 1961, ch. 295.

The bracketed insertion in subsection E was added by the compiler to supply the probable intended word. See definitions in § 37-409.

The words in parentheses so appeared in the law as enacted.

For words "this act", see Compiler's Notes, § 37-409.

**Effective Dates.**

Section 263 of S.L. 1974, ch. 18 provided the act should be in full force and effect on and after July 1, 1974.

**37-411. Standards for transportation tanks.** — The following standards are hereby adopted relating to transportation tanks:

A. The transportation tank and accessories in the milk handling operation shall comply with the requirements of the Sanitary Standards Symbol Administrative Council, 3A standards for transportation tanks existing at the time of the passage of this act.

B. Suitable facilities, including hot and cold running water, detergent, brushes, sanitizers, and sanitizing equipment, a concrete floor with proper drainage and waste disposal shall be provided for washing and sanitizing of transportation tanks. Unless the truck is to be used within a few hours of the washing operation the sanitizing of the tank shall be omitted until just before the tank truck is to be used. During the interim the tank truck shall be protected from contamination by closing port holes, etc. Since the tank truck may be sanitized on a different date and at a different time from cleaning and washing operation, a tag shall provide space for recording this information. The washing, sanitizing and maintenance of the transportation tank and accessories shall be the responsibility of the processor or milk hauler. The department of agriculture shall be informed in writing designating the person responsible for the cleaning, sanitizing and maintenance of the transportation tank.

C. The transportation tank and all accessories shall be thoroughly rinsed after each usage and shall be thoroughly cleaned and sanitized daily and the tank tagged and sealed with a tag attached indicating that the tank has been washed and/or sanitized. This tag shall also contain the name of the person doing the work and the date on which the work was done. The tag shall be removed by the hauler at his first pickup and shall be retained at the receiving plant for a minimum of thirty (30) days.

D. Single length, durable, non-toxic, flexible milk conductor tubing shall be used for conveying milk from the farm tank to the transportation tank.

The inside diameter of milk conductor tubing shall not be less than one and three-eighths (1 3/8) inches. If two (2) lengths of tubing are used, they shall be connected either by the use of sanitary couplings or a piece of 3A sanitary tubing with clamps which can be removed without tools. The connections between the pump and the vehicle tank, and between the pump and the milk conductor tubing shall remain assembled except when dismantled for cleaning. The open end of the milk tubing shall be capped with an approved protective cap at all times except when loading or unloading. The outlet valve, milk pump and the milk conductor tubing and samples shall be inclosed in a properly drained, insulated, dust tight cabinet.

E. The transportation tank and the accessories shall be used for no other purpose than the handling of milk unless such other use is approved by the department of agriculture.

**History.**

I.C., § [37-411] 37-410, as added by 1961, ch. 295, § 3, p. 522; am. 1967, ch. 66, § 3, p. 148; am. 1986, ch. 101, § 5, p. 281.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101.

by 3-A Sanitary Standards, Inc. See <http://www.3-a.org>.

**Compiler's Notes.**

Sanitary standards and accepted practices for the food, beverage, and pharmaceutical industries, once governed by the Sanitary Standards Symbol Administrative Council, referred to in subsection A, are now governed

The phrase "time of passage of this act", in subsection A, refers to S.L. 1961, ch. 295.

Sections 1 to 5 of S.L. 1961, ch. 295 were enacted as §§ 37-408 to 37-412 but were renumbered as §§ 37-409 to 37-413 as there already was a section compiled as § 37-408.

**37-412. Standards for milk haulers.** — The following standards are hereby adopted relating to milk haulers and to the operation of transportation tanks:

1. All milk haulers must possess a permit issued by the department of agriculture. All milk haulers shall be subject to such examination and abilities as the department of agriculture may prescribe by regulation in order to receive and retain such permit. The fee for the permit shall be twenty-five dollars (\$25.00). The permit shall be valid for three (3) years and must be renewed by December 31 of the third year.

2. The milk line shall be passed through a special port opening through the milk house wall with care to prevent contact with the ground or floor of the milk house. The port opening shall be closed when not in use.

3. It shall be the responsibility of the milk hauler to assure that in the event the processor washes and sanitizes the truck the operation has been adequately performed, and that prior to use the tank truck has been properly sanitized. In the event it is the milk hauler's responsibility to sanitize the tank truck it shall be done with a chlorine solution of proper strength.

4. The milk hauler's hands shall be washed immediately before gauging the milk.

5. The milk shall be observed and checked for abnormalities or adulterations, and all abnormal or adulterated milk shall be rejected.

6. The milk volume in the farm tank shall be determined in a sanitary manner.

7. The milk in the farm tank shall be thoroughly agitated. Milk samples for analysis shall be taken in a sanitary manner into properly identified sterile containers. All sampling shall follow standard methods.

8. After the milk is pumped to the transportation tank the milk conductor tubing shall be capped and returned to the vehicle storage cabinet. Care shall be taken to prevent soiling of the milk line by contact with the milk house floor, operator's hands or the ground.

9. The milk hauler shall rinse the farm tank and accessories free of milk with clean water immediately after emptying.

10. The milk hauler shall be responsible for proper use of the transportation tank and accessories.

**History.** ch. 295, § 4, p. 522; am. 1986, ch. 101, § 6, p. I.C., § [37-412] 37-411, as added by 1961, 281; am. 1990, ch. 411, § 2, p. 1139.

#### STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

enacted as §§ 37-408 to 37-412 but were renumbered as §§ 37-409 to 37-413 as there already was a section compiled as § 37-408.

**Compiler's Notes.**

Sections 1 to 5 of S.L. 1961, ch. 295 were

**37-413. Standards for quality control of milk samples.** — The following standards are hereby adopted relating to quality control of milk samples taken from tanks:

A. As often as is deemed necessary the department of agriculture may take samples for analysis from each farm tank or each transportation tank.

B. All milk samples taken from farm tanks or transportation tanks shall be taken in a sanitary manner in accordance with standard methods. Samples for bacteriological analysis shall be properly iced and transported in accordance with standard methods (32-40°F).

C. The department of agriculture shall have access to all records maintained by the receiving plant relating to butterfat, temperature, and bacteriological sampling and any other samples of bulk farm tank milk.

D. Milk samples for analysis shall be available on the farm tank pick up [pickup] truck at all times during the collection period and delivery to the plant, as required by the department of agriculture.

E. The sanitary requirements concerning milk and cream established by section 37-402, Idaho Code, are hereby adopted and shall be applicable hereto.

**History.**

I.C., § [37-413] 37-412, as added by 1961, ch. 295, § 5, p. 522.

#### STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

renumbered as §§ 37-409 to 37-413 as there already was a section compiled as § 37-408.

**Compiler's Notes.**

Sections 1 to 5 of S.L. 1961, ch. 295 were enacted as §§ 37-408 to 37-412 but were

The bracketed insertion in subsection D was inserted by the compiler to make a grammatical correction.

The numbers in parentheses so appeared in the law as enacted.

## CHAPTER 5

### INSPECTION AND LICENSING OF DAIRY PRODUCT DEALERS AND ESTABLISHMENTS — MILK COMPONENTS AND QUALITY TESTING

#### SECTION.

- 37-501. Director and deputy director of dairying — Appointment, qualifications and term of office. [Repealed.]
- 37-502. Inspections of dairy product establishments.
- 37-503. Licenses — Retail vendor excepted — Fees — Posting — Definitions.
- 37-504. Licenses — Duration and revocation.
- 37-505. Reports of licensees.
- 37-506. Method of testing milk and cream.
- 37-507. Statement of milk or cream purchased.
- 37-508. Apparatus to be correct — Penalty. [Repealed.]
- 37-509. Penalty for violations.
- 37-510. Retention of tested samples.

#### SECTION.

- 37-511. Tester's and grader's license — Examination — Licensee's substitute.
- 37-512. Testing and grading when purchase price based on milk fat or butter fat content.
- 37-513. False tests — Evidence.
- 37-514. Testing without license — Separate offenses.
- 37-515. Fees and fines — Disposition.
- 37-516. Rules for administration — "Department" defined.
- 37-517. Violation a misdemeanor. [Repealed.]
- 37-518. Prosecutions — Duty of prosecuting attorney. [Repealed.]
- 37-519. Construction with sanitary and health laws. [Repealed.]

#### **37-501. Director and deputy director of dairying — Appointment, qualifications and term of office. [Repealed.]**

#### STATUTORY NOTES

##### Compiler's Notes.

This section, which comprised 1925, ch. 244, § 1, p. 435; am. 1929, ch. 232, § 1, p.

454; I.C.A., § 36-701, was repealed by S.L. 1974, ch. 18, § 1.

**37-502. Inspections of dairy product establishments.** — It shall be the duty of the director of the department of agriculture, to make inspections or cause inspections to be made in this state of all places required to be licensed by the provisions of this act, where dairy products are sold, offered for sale, or manufactured in the enforcement of the present dairy laws and all future dairy legislation hereinafter enacted, and to collect statistics on the manufacture and sale of dairy products in Idaho.

##### History.

1925, ch. 224, § 2, p. 435; I.C.A., § 36-702; am. 1974, ch. 18, § 255, p. 364.

#### STATUTORY NOTES

##### Cross References.

Director of department of agriculture, § 22-101.

The words "this act" refer to S.L. 1925, ch. 224, which is codified as §§ 37-502 to 37-505, 37-510, 37-511, and 37-513 to 37-519.

##### Compiler's Notes.

As enacted the section heading of this section read, "Duties of director of dairying."

**37-503. Licenses — Retail vendor excepted — Fees — Posting —**

**Definitions.** — Every creamery, milk plant, shipping or cream buying station, milk condensing plant, cheese factory, mix making plant, ice cream factory, reprocessing plant, casein plant, powdered milk plant, or factory of milk products, or other person receiving or purchasing milk or cream in bulk other than a retail vendor of milk on the basis of volume, milk components or milk quality therein, shall annually obtain a license therefor. Such license shall be issued by the department upon being satisfied that the building, places, or premises where such milk or dairy products are to be received or purchased are maintained in a sanitary manner, and that a laboratory or enclosed test room is provided in which to test milk and cream, that ample light is provided therein, and that at all times the room is kept in a clean and sanitary condition, and upon payment of such license fee to the department according to the following schedule:

Milk condensery, one hundred dollars (\$100), reprocessing plant, one hundred dollars (\$100), creamery, fifty dollars (\$50.00), cheese factory, twenty dollars (\$20.00), ice cream factory, twenty dollars (\$20.00), mix making plant, twenty dollars (\$20.00), casein plant, twenty dollars (\$20.00), milk powder plant, thirty dollars (\$30.00), cream buying or shipping station, fifteen dollars (\$15.00). When one (1) or more kinds of dairy products are being manufactured by the same firm on the same premises, this shall be construed to require that a separate license be procured for each kind of product manufactured and sold. The license, when issued, shall be posted in a conspicuous place in the plant for which issued.

The term "creamery" shall mean any place, building or structure wherein milk or cream is manufactured into butter for sale.

The term "milk plant" shall mean any place, building or structure wherein milk is received for bottling, pasteurizing, clarifying or otherwise processing.

The term "shipping or cream buying station" shall mean any place where milk or cream is delivered by the producers to a buyer, not a manufacturer, or to the agent or representative of a manufacturer or processor of dairy products for shipment or transportation to such manufacturer or processor.

The term "milk condensing plant" shall mean any place, building or structure wherein milk is condensed or processed by removing a considerable portion of the water or other milk constituents normally contained therein.

The term "cheese factory" shall mean any place, building or structure wherein milk is manufactured into cheese.

The term "ice cream factory" shall mean any place, building or structure wherein milk or cream, regardless of butterfat content, and with or without other constituents, shall be manufactured into a frozen or semifrozen product for human consumption and for sale at wholesale or retail. This term shall not include "frozen dessert machines."

The term "frozen dessert machine" shall mean the freezer or other device by which the liquid ingredients for frozen dessert are frozen to a solid or semisolid consistency and are discharged, expelled or drawn off for sale at retail.

The term "mix making plant" shall mean any place, building or structure wherein milk or cream, with or without other constituents, shall be mixed or

processed for resale to ice cream factories; provided, that any duly licensed ice cream factory may carry on, as a part of its business, the business of mix making plant without being required to pay therefor, additional license for so doing.

The term "reprocessing plant" shall mean any place, building or structure wherein a dairy product is mixed, dried, shredded, packaged or further processed into a dairy product. A reprocessing plant does not include retail stores, restaurants or similar institutions.

The term "casein plant" shall mean any place, building or structure wherein casein is manufactured for sale.

The term "powdered milk plant" shall mean any place, building or structure wherein milk or any product of milk is processed by evaporating or removing therefrom the water or moisture contained therein to a point where the product may be handled as a dry product. A powdered milk plant also includes a facility wherein dry milk products are blended or processed into other milk products.

#### **History.**

1925, ch. 224, § 8, p. 435; am. 1927, ch. 98, § 1, p. 127; am. 1929, ch. 233, § 1, p. 455; I.C.A., § 36-703; am. 1937, ch. 147, § 1, p.

240; am. 1941, ch. 134, § 1, p. 266; am. 1947, ch. 160, § 1, p. 412; am. 1967, ch. 124, § 1, p. 282; am. 1982, ch. 6, § 1, p. 8; am. 1992, ch. 93, § 15, p. 295; am. 2011, ch. 115, § 2, p. 315.

#### **STATUTORY NOTES**

##### **Cross References.**

"Department" means department of agriculture, § 37-516.

##### **Amendments.**

The 2011 amendment, by ch. 115, in the first paragraph, substituted "on the basis of volume, milk components or milk quality" for "on the basis of the amount of milk fat" in the first sentence and deleted "and that cream scales are protected and placed on a solid foundation and away from drafts" following "sanitary manner" in the second sentence; in the sixth paragraph, substituted "processed by removing a considerable portion of the

water or other milk constituents" for "processed by evaporation of a considerable portion of the water"; in the second-to-last paragraph, rewrote the first sentence, which read: "The term 'reprocessing plant' shall mean any place, building or structure wherein a cheese product is made by comminuting and mixing one or more lots of cheese of the same variety or of different varieties into a homogenous, plastic mass with or without the addition of water and emulsifying agents" and added the second sentence; and in the last paragraph, added the last sentence.

**37-504. Licenses — Duration and revocation.** — Licenses shall be issued by the department for the period of one (1) year, fees for which shall be prorated for the appropriate number of months until renewal, and shall expire on December thirty-first of each year issued, and may be revoked by the department after a hearing on ten (10) days' notice to the licensee, if such licensee shall fail to comply with the provisions of this act. No such license shall be issued, and if issued may be revoked, in the following cases:

(1) If there shall be permitted to exist any other cause or thing calculated or tending to render the milk or cream, or any product thereof, used or produced in such manufacturing or processing operations, unclean, impure and unhealthy.

(2) If the licensee does not meet rules adopted by the department of agriculture for the processing of grade A and manufacturing grade milk and milk products.

**History.**

1925, ch. 224, § 9, p. 435; I.C.A., § 36-704; am. 1937, ch. 147, § 2, p. 240; am. 2011, ch. 115, § 3, p. 315.

**STATUTORY NOTES****Cross References.**

“Department” means department of agriculture, § 37-516.

the non-issuance and revocation of certain licenses.

**Amendments.**

The 2011 amendment, by ch. 115, rewrote the section, providing for the proration of license fees and revising provisions relating to

**Compiler’s Notes.**

The words “this act” refer to S.L. 1925, ch. 224, which is codified as §§ 37-502 to 37-505, 37-510, 37-511, and 37-513 to 37-519.

**37-505. Reports of licensees.** — All buyers of butterfat, cream, milk or other dairy products, required to be licensed by the provisions of this act, shall report to the director of the department of agriculture monthly the number of pounds of each grade of cream, butterfat or other dairy products purchased or manufactured and prices paid.

**History.**

1925, ch. 224, § 4, p. 435; I.C.A., § 36-705; am. 1939, ch. 89, § 1, p. 148; am. 1974, ch. 18, § 256, p. 364; am. 2011, ch. 115, § 4, p. 315.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

and deleted the former last sentence, which read: “Such report blanks are to be furnished by the department and additional reports may be called for at the discretion of the department.”

**Compiler’s Notes.**

The words “this act” refer to S.L. 1925, ch. 224, which is codified as §§ 37-502 to 37-505, 37-510, 37-511, and 37-513 to 37-519.

**Amendments.**

The 2011 amendment, by ch. 115, deleted “at each station operated by any creamery, cheese factory, condenser, casein, milk powder or ice cream plant in the state” from the end

**37-506. Method of testing milk and cream.** — All milk and cream purchased or sold in the state of Idaho at a price based upon or determined by the milkfat, protein, lactose, solids nonfat or somatic cell counts thereof, shall be tested by methods approved by the director of the department of agriculture of the state of Idaho. Samples must be taken from every shipment of milk and cream. Accurate thermometers must be provided at all times. Milk and cream samples must be protected and in a tamper-proof place between thirty-three (33) and forty-five (45) degrees Fahrenheit. Such samples may be examined and tested by the department of agriculture at any time. The department of agriculture is authorized to conduct audits of a person’s, corporation’s, cooperative’s or company’s payments for milk or cream to determine if such payments comply with established requirements.

**History.**

1913, ch. 132, § 1, p. 482; am. 1915, ch. 100, § 1, p. 238; reen. C.L. 65:71; C.S., § 1738; I.C.A., § 36-706; am. 1947, ch. 160, § 2, p.

412; am. 1963, ch. 49, § 1, p. 201; am. 1974, ch. 18, § 257, p. 364; am. 1986, ch. 101, § 7, p. 281; am. 2011, ch. 115, § 5, p. 315.

## STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

Penalty for violation, § 37-509.

Standard of glassware for Babcock tests, § 37-601 et seq.

**Amendments.**

The 2011 amendment, by ch. 115, rewrote the section, revising testing provisions and authorizing the department of agriculture to conduct certain audits relating to payments for milk and cream.

**37-507. Statement of milk or cream purchased.** — Every person, corporation, cooperative or company that determines the value of any milk or cream received or bought by such person, corporation, cooperative or company on a milk volume, component or somatic cell count basis shall, when paying for such milk or cream, include in every statement or check issued to any patron in payment therefor a statement of the number of pounds of milk, milk components and the average somatic cell counts, if applicable, for which payment is made. Records for such transactions shall be retained by the purchaser of the milk or cream for at least one (1) year from the date the tests were conducted.

**History.**

1913, ch. 132, § 3, p. 482; reen. C.L. 65:73; C.S., § 1740; I.C.A., § 36-707; am. 1947, ch.

160, § 3, p. 412; am. 1970, ch. 34, § 1, p. 72; am. 2011, ch. 115, § 6, p. 315.

## STATUTORY NOTES

**Cross References.**

Penalty for violation, § 37-509.

the section, revising provisions relating to statements of milk and cream purchased.

**Amendments.**

The 2011 amendment, by ch. 115, rewrote

**37-508. Apparatus to be correct — Penalty. [Repealed.]**

## STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1913, ch. 132, § 4, p. 482; reen. C.L. 65:74, C.S.,

§ 1741; I.C.A., § 36-708, was repealed by S.L. 1970, ch. 34, § 2, p. 72.

**37-509. Penalty for violations.** — (1) Whoever shall violate any of the provisions of this chapter or the rules promulgated hereunder for carrying out any requirements herein specified may be assessed a civil penalty by the department or its duly authorized agent of not more than ten thousand dollars (\$10,000) for each offense.

(2) Assessment of a civil penalty may be made in conjunction with any other department administrative action.

(3) No civil penalty may be assessed unless the person, corporation, cooperative or company charged was given notice and opportunity for a hearing pursuant to the Idaho administrative procedure act.

(4) If the department is unable to collect such penalty or if any person, corporation, cooperative or company fails to pay all or a set portion of the civil penalty as determined by the department, it may recover such amount by action in the appropriate district court.

(5) Any person, corporation, cooperative or company against whom the department has assessed a civil penalty under the provisions of this section may, within twenty-eight (28) days of the final action by the agency making the assessment, appeal the assessment to the district court of the county in which the violation is alleged by the department to have occurred.

(6) Nothing in this chapter shall be construed as requiring the director to report minor violations for prosecution when he believes that the public interest will be best served by suitable warnings or other administrative action.

#### **History.**

1913, ch. 132, § 6, p. 483; reen. C.L. 65:77; C.S., § 1744; I.C.A., § 36-709; am. 1992, ch.

93, § 16, p. 295; am. 2011, ch. 115, § 7, p. 315.

#### **STATUTORY NOTES**

##### **Amendments.**

The 2011 amendment, by ch. 115, rewrote the section, which formerly read: "Whoever shall violate any of the provisions of sections 37-506 through 37-508, Idaho Code, shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than twenty-five dollars (\$25.00) nor more than two hundred dollars (\$200), for each and every offense, or be imprisoned in the county

jail not less than thirty (30) days nor more than sixty (60) days, or both such fine and imprisonments."

##### **Effective Dates.**

Section 32 of S.L. 1992, ch. 93 provided that the act should be in full force and effect on and after July 1, 1993.

**37-510. Retention of tested samples.** — Every operator testing components in milk or cream for the purpose of determining their commercial value when purchased or sold shall keep for the period of forty-eight (48) hours after completing a test a portion sufficient for two (2) tests of each and every sample tested. These samples shall be accessible to the director or his representative at any and all times and legible record of all tests made by the operator of said tests shall be accessible to the department for a period of thirty (30) days following such tests.

#### **History.**

1925, ch. 224, § 5, p. 435; I.C.A., § 36-710; am. 1974, ch. 18, § 258, p. 364; am. 2011, ch.

115, § 8, p. 315.

#### **STATUTORY NOTES**

##### **Cross References.**

Director of department of agriculture, § 22-101.

tuted "Every operator testing components" for "Every operator of a Babcock test for butterfat" in the first sentence.

##### **Amendments.**

The 2011 amendment, by ch. 115, substi-

**37-511. Tester's and grader's license — Examination — Licensee's substitute.** — Every person testing or grading milk or cream to determine the milk fat as a basis of fixing the purchase price or to determine the acceptability of such milk or cream shall secure a tester's license from the department and shall make such tests and grading only by such process as has been approved by the department, and no person shall make such test and grading without such license, and other than by such process. Each applicant for such license shall be required to submit to examination or by

actual demonstration show competency in testing and grading cream and milk according to the regulations prescribed by the department. The fee for each licensee shall be twenty-five dollars (\$25.00). The license shall be valid for three (3) years and must be renewed by December 31 of the third year. With the approval of the department any licensee may appoint a substitute to act for a period not to exceed fourteen (14) days.

**History.** am. 1947, ch. 160, § 4, p. 412; am. 1990, ch. 1925, ch. 224, § 6, p. 435; I.C.A., § 36-711; 411, § 3, p. 1139.

#### STATUTORY NOTES

##### Cross References.

Violation a misdemeanor, § 37-517.

**37-512. Testing and grading when purchase-price based on milk fat or butter fat content.** — All buyers of cream or milk, who purchase milk or cream at a purchase price based upon or determined by the milk fat or butter fat content thereof, shall maintain at the plant, creamery, station or factory where such milk or cream is being received, a person licensed by the department of agriculture to test and grade milk and cream.

**History.**

I.C.A., § 36-711A, as added by 1947, ch. 160, § 5, p. 412.

#### STATUTORY NOTES

##### Cross References.

Department of agriculture, § 22-101 et seq.

**37-513. False tests — Evidence.** — No person shall falsely manipulate or misread milk or cream testing apparatus. The writing of a check or payment of money by such person, corporation, cooperative or company for cream or milk shall constitute *prima facie* evidence that such test was made.

**History.**

1925, ch. 224, § 7, p. 435; I.C.A., § 36-712; am. 2011, ch. 115, § 9, p. 315.

#### STATUTORY NOTES

##### Amendments.

The 2011 amendment, by ch. 115, deleted “the Babcock test or any other” following “misread” in the first sentence and inserted “corporation, cooperative or company” in the second sentence.

**37-514. Testing without license — Separate offenses.** — The testing of each lot of milk or cream by an unlicensed person shall constitute a separate offense.

**History.**

1925, ch. 224, § 12, p. 435; I.C.A., § 36-713.

**37-515. Fees and fines — Disposition.** — Fees and fines collected under the provisions of this act shall be credited and paid into the dairy industry and inspection fund [account]. The department is authorized by rule to set forth parameters relating to payments, refunds or other adjustments whenever the department determines milk or cream component testing fails to meet requirements. The payments or refunds shall be made to the aggrieved party within thirty (30) days.

**History.**

1925, ch. 224, § 10, p. 435; I.C.A., § 36-714; am. 1933, ch. 47, § 3, p. 75; am. 1950 (E. S.), ch. 76, § 2, p. 101; am. 2011, ch. 115, § 10, p. 315.

#### STATUTORY NOTES

**Cross References.**

Disposition of fines and forfeitures, § 19-4705.

**Amendments.**

The 2011 amendment, by ch. 115, added the last sentence.

**Compiler's Notes.**

The bracketed insertion was added by the compiler to correct the name of the referenced account. See § 37-407.

The words "this act" refer to S.L. 1925, ch.

224, which is codified as §§ 37-502 to 37-505, 37-510, 37-511, and 37-513 to 37-519.

Sections 3 and 4 of S.L. 1950 (E. S.), ch. 76 provided for the transfer of balance in dairy inspection accounts fund and agricultural department inspection fund to dairy industry and inspection account.

**Effective Dates.**

Section 5 of S.L. 1950 (E. S.), ch. 76, provided that said act should be in full force and effect on and after March 8, 1950.

**37-516. Rules for administration — “Department” defined.** — The director of the department of agriculture is empowered to prescribe rules and regulations in the administration of this act not inconsistent with its provisions. The term "department," as used in this act, means the department of agriculture.

**History.**

1925, ch. 224, § 11, p. 435; I.C.A., § 36-715; am. 1974, ch. 18, § 259, p. 364.

#### STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

224, which is codified as §§ 37-502 to 37-505, 37-510, 37-511, and 37-513 to 37-519.

**Compiler's Notes.**

The words "this act" refer to S.L. 1925, ch.

**37-517. Violation a misdemeanor. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 11, effective July 1, 2011.

**History.**

1925, ch. 224, § 13, p. 435; I.C.A., § 36-716.

**37-518. Prosecutions — Duty of prosecuting attorney. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 12, effective July 1, 2011.

**History.**

1925, ch. 224, § 14, p. 435; I.C.A., § 36-717.

**37-519. Construction with sanitary and health laws. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 13, effective July 1, 2011.

**History.**

1925, ch. 224, § 15, p. 435; I.C.A., § 36-718;  
am. 1974, ch. 18, § 260, p. 364.

## CHAPTER 6

### STANDARDIZATION OF GLASSWARE FOR BABCOCK TESTS

## SECTION.

37-601 — 37-606. [Repealed.]

**37-601. Use of standard glassware required. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**History.**

1927, ch. 217, § 1, p. 311; I.C.A., § 36-801; am. 1951, ch. 14, § 1, p. 23; am. 1970, ch. 39,

§ 1, p. 86; am. 1992, ch. 93, § 17, p. 295.

**37-602. Fee for testing glassware. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1927, ch. 217, § 2, p. 311; I.C.A., § 36-802; am. 1967,

ch. 35, § 1, p. 59, was repealed by S.L. 1970, ch. 39, § 2, p. 86.

**37-603. Standard Babcock testing glassware. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**History.**

1927, ch. 217, § 5, p. 311; I.C.A., § 36-803.

**37-604. Violation a misdemeanor. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**History.**

1927, ch. 217, § 3, p. 311; I.C.A., § 36-804.

**37-605. Action by prosecuting attorney. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**History.**

1927, ch. 217, § 4, p. 311; I.C.A., § 36-805.

**37-606. Time of taking effect. [Repealed.]**

Repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**History.**

1927, ch. 217, § 6, p. 311; I.C.A., § 36-806.

## CHAPTER 7

### PASTEURIZATION OF MARKET MILK AND MARKET MILK PRODUCTS

**SECTION.**

- 37-701. Statement of purpose.
- 37-702. Definitions.
- 37-703. Director of department of agriculture to enforce.
- 37-704. Department of Public Health to issue certificates of compliance. [Repealed.]
- 37-705. Certificate to be renewed annually.

**SECTION.**

- 37-706. Certificate necessary for labeling as pasteurized.
- 37-707. Standards for equipment and sanitation.
- 37-708. Rules, regulations and standards to be prescribed.
- 37-709. Penalty for violations.
- 37-710. Injunctions against violations.
- 37-711. Separability.

**37-701. Statement of purpose.** — It is hereby declared to be the policy of the legislature of the state of Idaho that the public interest requires that all market milk and market milk products packaged for sale or resale as pasteurized market milk or pasteurized market milk products be pasteurized with properly designed equipment in plants which maintain minimum standards of sanitation in accordance with the provisions of this chapter in the handling and processing of such products and that personnel employed in such plants be free from communicable disease, and that plants which properly pasteurize milk and milk products require protection from competition which does not conform to the standards herein set forth.

**History.**

I.C.A., § 36-1801, as added by 1947, ch. 128, § 1, p. 305.

**37-702. Definitions.** — For the purposes of this chapter the definitions of "milk", "milk products" and related terms shall be promulgated by the director of the state department of agriculture.

**History.**

I.C.A., § 36-1802, as added by 1947, ch. 128, § 1, p. 305; am. 1967, ch. 53, § 1, p. 99; am. 1974, ch. 23, § 33, p. 633; am. 1992, ch. 93, § 18, p. 295.

#### STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

**37-703. Director of department of agriculture to enforce.** — It shall be the duty of the director of the department of agriculture to enforce the provisions of this chapter and the director of the department of agriculture shall from time to time cause appropriate inspections of all milk

pasteurizing plants to be made to the end that compliance with this chapter is enforced. It shall be the duty of the attorney general and the various prosecuting attorneys upon the request of the director of agriculture to assist in the enforcement of this chapter.

**History.** 128, § 1, p. 305; am. 1974, ch. 23, § 34, p. I.C.A., § 36-1803, as added by 1947, ch. 633; am. 1992, ch. 93, § 19, p. 295.

#### STATUTORY NOTES

**Cross References.** Department of agriculture, § 22-101 et seq.  
Attorney general, § 67-1401 et seq.

**37-704. Department of Public Health to issue certificates of compliance. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.** 1804, as added by 1947, ch. 128, § 1, p. 305,  
This section, which comprised I.C.A., § 36- was repealed by S.L. 1967, ch. 53, § 4.

**37-705. Certificate to be renewed annually.** — The certificate of compliance shall be renewed annually upon application, and without fee, on the anniversary of the effective date of this chapter; provided however that nothing herein shall be construed to require the department of agriculture to renew a certificate of compliance when, in the opinion of the director of the department of agriculture, the milk pasteurizing plant applying for renewal of the certificate is not complying with all the provisions of the chapter.

**History.** 128, § 1, p. 305; am. 1992, ch. 93, § 20, p. I.C.A., § 36-1805, as added by 1947, ch. 295.

#### STATUTORY NOTES

**Cross References.** refers to the effective date of S.L. 1947, ch.  
Department of agriculture, § 22-101 et seq. 128, which was July 1, 1947.

**Compiler's Notes.**  
The phrase "effective date of this chapter"

**37-706. Certificate necessary for labeling as pasteurized.** — From and after effective date of this act no person, partnership, copartnership or corporation shall label milk or milk products packaged for sale or resale as pasteurized unless and until the plant producing such milk or milk products shall have first obtained from the director of the department of agriculture a certificate of compliance.

**History.** 128, § 1, p. 305; am. 1974, ch. 23, § 35, p. I.C.A., § 36-1806, as added by 1947, ch. 633; am. 1992, ch. 93, § 21, p. 295.

## STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

refers to the effective date of S.L. 1947, ch. 128, which was July 1, 1947.

**Compiler's Notes.**

The phrase "effective date of this chapter"

**37-707. Standards for equipment and sanitation.** — From and after the effective date of this act all milk pasteurizing plants in the state of Idaho shall comply with the following standards for equipment and sanitation:

(a) The floors of all rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall be constructed of concrete or other equally impervious and easily cleaned material and shall be smooth, properly drained, provided with trapped drains, and kept clean.

(b) Walls and ceilings of rooms in which milk or milk products are handled or stored or in which milk utensils are washed shall be painted and shall have a smooth, washable, light-colored surface and shall be kept clean.

(c) Unless other effective means are provided to prevent the access of flies, all openings into the outer air shall be effectively screened and doors shall be self-closing.

(d) All rooms shall be well lighted and ventilated.

(e) Milk-plant operations shall be so located and conducted as to prevent any contamination of the milk or the cleaned equipment. There shall be separate rooms for (a) the pasteurizing, processing, cooling, and bottling operations, and (b) the washing and bactericidal treatment of containers. Cans of raw milk shall not be unloaded directly into the pasteurizing room. Pasteurized milk or milk products shall not be permitted to come in contact with equipment with which unpasteurized milk or milk products have been in contact, unless such equipment has first been thoroughly cleaned and subjected to bactericidal treatment. Rooms in which milk, milk products, cleaned utensils, or containers are handled or stored shall not open directly into any stable or living quarters. The pasteurization plant shall be used for no other purpose than the processing of milk and milk products and the operations incident thereto, except as may be approved by the department of agriculture.

(f) Every milk pasteurization plant shall be provided with toilet facilities conforming with recommendations of the department of agriculture. Toilet rooms shall not open directly into any room in which milk, milk products, equipment, or containers are handled or stored. The doors of all toilet rooms shall be self-closing. Toilet rooms shall be kept in a clean condition, in good repair, and well ventilated. In case privies or earth closets are permitted and used, they shall be separate from the building, and shall be of a sanitary type constructed and operated and maintained so that the waste is inaccessible to flies and does not pollute the surface soil or contaminate any water supply.

(g) The water supply shall be easily accessible, adequate, and of a safe, sanitary quality.

(h) Convenient handwashing facilities shall be provided, including warm running water, soap, and approved sanitary towels. The use of a common towel is prohibited.

(i) All piping used to conduct milk or milk products shall be "sanitary milk piping" of a type which can be easily cleaned with a brush. Pasteurized milk and milk products shall be conducted from one (1) piece of equipment to another only through sanitary milk piping.

(j) All multi-use containers and equipment with which milk or milk products come in contact shall be constructed in such manner as to be easily cleaned and shall be kept in good repair. The manufacture, packing, transportation, and handling of single-service containers and container caps and covers shall be conducted in a sanitary manner.

(k) All wastes shall be properly disposed of.

(l) All milk and milk products containers and equipment, except single-service containers, shall be thoroughly cleaned after each usage. All containers shall be subjected to an approved bactericidal process after each cleaning and all equipment immediately before each usage. When empty and before being returned to a producer by a milk plant each container shall be effectively cleaned and subjected to bactericidal treatment.

(m) After bactericidal treatment all bottles, cans, and other multi-use milk or milk-products containers and equipment shall be stored in such manner as to be protected from contamination.

(n) Between bactericidal treatment and usage, and during usage, containers and equipment shall not be handled or operated in such manner as to permit contamination of the milk.

(o) Milk-bottle caps or cap stock, parchment paper for milk cans, and single-service containers shall be purchased and stored only in sanitary tubes and cartons, respectively, and shall be kept therein in a clean dry place.

(p) All milk and milk products received for pasteurization shall immediately be cooled in approved equipment to 50° F., or less and maintained at that temperature until pasteurized, and all pasteurized milk and milk products shall be immediately cooled in approved equipment to an average temperature of 50° F., or less. Average cooling temperature shall be taken to mean the arithmetic average, of the respective temperature of the last four (4) consecutive samples, taken upon separate days.

(q) Packaging and capping or sealing of milk and milk products shall be done at the place of pasteurization in approved mechanical equipment only. Hand capping is prohibited.

(r) Overflow of milk or milk products shall not be sold for human consumption.

(s) The director of the department of agriculture or physicians authorized by him shall examine and take a careful morbidity history of every person employed in a pasteurization plant, or about to be employed, whose work brings him in contact with the production, handling, storage, or transportation of milk, milk products, containers, or equipment. If such examination or history indicates that such person may be a carrier of or infected with the organisms of typhoid or paratyphoid fever or any other communicable diseases likely to be transmitted through milk, he shall secure appropriate specimens of body discharges and cause them to be examined in a laboratory approved by him or by the state board of health and welfare for such examination and if the results indicate that such person is or may be a carrier of such disease, such person shall be barred from such employment.

(t) All persons coming in contact with milk, milk products, containers, or equipment shall wear clean outer garments and shall keep their hands clean at all times while thus engaged.

(u) All vehicles used for the transportation of milk or milk products shall be so constructed and operated as to protect their contents from the sun and from contamination. All vehicles used for the transportation of milk or milk products in their final delivery containers shall be constructed with permanent tops and with permanent or rolldown sides and back, provided that openings of the size necessary to pass the delivery man may be permitted in the sides or back for loading and unloading purposes. All vehicles shall be kept clean, and no substance capable of contaminating milk or milk products shall be transported with milk or milk products in such manner as to permit contamination. All vehicles used for the distribution of milk or milk products shall have the name of the distributor prominently displayed. The immediate surroundings of the milk plant shall be kept in a neat, clean condition.

**History.**

I.C.A., § 36-1807, as added by 1947, ch. 128, § 1, p. 305; am. 1967, ch. 53, § 2, p. 99; am. 1974, ch. 23, § 36, p. 633; am. 1992, ch. 93, § 22, p. 295.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.  
State board of health and welfare, § 56-1005.

**Compiler's Notes.**

The phrase "effective date of this chapter" refers to the effective date of S.L. 1947, ch. 128, which was July 1, 1947.

**37-708. Rules, regulations and standards to be prescribed.** — The director of the department of agriculture is hereby authorized and directed to prescribe rules, regulations and standards of equipment and sanitation in accordance with the provisions of this chapter and not inconsistent with the statement of purpose contained in section 37-701, Idaho Code, whenever, in its opinion, new and/or different methods of pasteurizing milk or milk products have attained a degree of scientific advancement which will more certainly effectuate the purposes of this chapter.

**History.**

I.C.A., § 36-1808, as added by 1947, ch. 128, § 1, p. 305; am. 1974, ch. 23, § 37, p. 633; am. 1992, ch. 93, § 23, p. 295.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the

**37-709. Penalty for violations.** — Any person or persons, corporation or corporations, partnership or copartnership by itself or by its agents or servants, violating this chapter, or any part, provision or section thereof shall be guilty of a misdemeanor and upon conviction thereof shall be

punished by a fine not exceeding \$300.00 and not less than \$25.00 or by imprisonment in the county jail for a period not exceeding six (6) months, or by both such fine and imprisonment.

**History.**

I.C.A., § 36-1809, as added by 1947, ch. 128, § 1, p. 305.

**37-710. Injunctions against violations.** — Whenever any person, corporation, partnership or copartnership has violated any of the provisions of this chapter and persists in such violation, the director of the department of agriculture may apply to the district court of the county in which the violation is occurring for an injunction restraining such violation and upon a showing that such violation is occurring or is threatened the judge of such court shall issue an order restraining such violation and granting such other relief as may be equitable in the case.

**History.**

I.C.A., § 36-1810, as added by 1947, ch. 128, § 1, p. 305; am. 1992, ch. 93, § 24, p. 295.

#### STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

the act should be in full force and effect on and after July 1, 1993.

**Effective Dates.**

Section 32 of S.L. 1992, ch. 93 provided that

**37-711. Separability.** — If any provision of this chapter, or the application thereof to any person or circumstance shall be held to be invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are declared to be severable.

**History.**

I.C.A., § 36-1811, as added by 1947, ch. 128, § 1, p. 305.

## CHAPTER 8

### GRADES OF QUALITY FOR MILK AND MILK PRODUCTS

SECTION.

- 37-801. Use of grade terms restricted.
- 37-802. Licenses.
- 37-803. Rules and regulations.
- 37-804. Revocation of licenses.
- 37-805. Definitions.
- 37-806. Penalty for violations — Injunctions.
- 37-807. Separability.
- 37-808. Policy to improve dairy quality requirements.
- 37-809. Adoption of federal standards for cer-

SECTION.

- tain dairy products. [Repealed.]
- 37-810. Administration of act — Publication of grade standards.
- 37-811. Compliance with naming and grading regulations required.
- 37-812. Violations of law misdemeanor. [Repealed.]
- 37-813. Rules and regulations — Effect. [Repealed.]

**37-801. Use of grade terms restricted.** — Hereafter no person shall use the terms "grade A," "grade B," "grade C," or combinations or multiples of the letters "a," "b," and "c," or any term similar thereto when used to indicate quality on packages or containers containing milk, or milk products or on or in connection with such products themselves, except as follows:

(1) In regard to milk or cream and pursuant to the terms of an ordinance of any incorporated city that legally has adopted and passed a grade A ordinance regulating the production, handling, distribution and sale of milk or cream within such city, provided said ordinance meets the requirements of the "standard milk ordinance" recommended by the Idaho department of agriculture and provided further that the said ordinance is properly enforced by such city. Semiannual surveys made by the director of the department of agriculture shall provide a basis for determining whether proper enforcement is being accomplished.

(2) In all cases not covered by subsection (1) hereof the use of the grade or quality designations herein mentioned shall be unlawful unless such person is licensed to use the same by the director of the department of agriculture of the state of Idaho.

In the case of milk or milk products not covered by the provisions of subsection (1) hereof, the department of agriculture shall establish grades which shall be the same as those established by the United States public health service and approved by the United States department of agriculture.

Nothing in this chapter shall be construed to prohibit the use of any registered or copyrighted brand or trade-mark, design or device pursuant to the provisions of any laws of this state or any other state or of the District of Columbia or the United States, provided such use is not in conflict with this chapter.

#### History.

I.C.A., § 36-1701, as added by 1941, ch. 23, § 38, p. 633; am. 1992, ch. 141, § 1, p. 274; am. 1951, ch. 157, § 1, p. 295.

352; am. 1967, ch. 46, § 1, p. 86; am. 1974, ch.

23, § 25, p. 295.

#### STATUTORY NOTES

##### Cross References.

Department of agriculture, § 22-101 et seq.

tion (2), is generally found at 42 USCS § 201 et seq.

##### Federal References.

The United States public health service, referred to in the second paragraph of subsec-

The United States department of agriculture, referred to in the second paragraph of subsection (2), is generally found at 7 USCS § 2201 et seq.

**37-802. Licenses.** — Any person desiring a license under this act shall make application therefor to the director of the department of agriculture, and upon such application being filed, said director shall furnish such applicant with the terms, conditions, rules and regulations, and upon the compliance therewith shall issue such applicant a revocable license for the use of any of the grade marks described in this chapter. The form of such application and license shall be determined and prescribed by the director of the department of agriculture.

**History.** 141, § 1, p. 274; am. 1974, ch. 23, § 39, p. I.C.A., § 36-1702, as added by 1941, ch. 633; am. 1992, ch. 93, § 26, p. 295.

#### STATUTORY NOTES

**Cross References.** 141, which is compiled as §§ 37-308 and Director of department of agriculture, § 22- §§ 37-801 to 37-807. 101.

**Compiler's Notes.**

The words "this act" refer to S.L. 1941, ch.

**37-803. Rules and regulations.** — The department of agriculture shall adopt rules and regulations governing the use of such grade marks mentioned in this chapter, and may revise such rules and regulations from time to time as may be deemed necessary and expedient.

**History.** 141, § 1, p. 274; am. 1974, ch. 23, § 40, p. I.C.A., § 36-1703, as added by 1941, ch. 633; am. 1992, ch. 93, § 27, p. 295.

#### STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

**37-804. Revocation of licenses.** — Any such license issued hereunder may be revoked for the violation of any of the rules and regulations under which it is issued or amendments thereof, or for failure to maintain such a standard of quality as may be prescribed.

**History.**

I.C.A., § 36-1704, as added by 1941, ch. 141, § 1, p. 274.

**37-805. Definitions.** — The word "person" as used in this chapter shall include individuals, partnerships, associations and corporations.

The term "department" shall mean the department of agriculture of the state of Idaho.

"Milk or milk products" as used in this chapter shall be defined as and include those products enumerated and defined in the standard milk ordinance referred to in section 37-801, subsection (1), Idaho Code.

**History.** 352; am. 1974, ch. 23, § 41, p. 633; am. 1992, I.C.A., § 36-1705, as added by 1941, ch. 141, § 1, p. 274; am. 1951, ch. 157, § 2, p. 295.

#### STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101.

**37-806. Penalty for violations — Injunctions.** — Any person violating any of the provisions of this chapter shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) nor more than three hundred dollars (\$300), and on the

complaint of the department any person operating in violation of said chapter may be enjoined in a suit in equity.

**History.** 141, § 1, p. 274; am. 1992, ch. 93, § 29, p. I.C.A., § 36-1706, as added by 1941, ch. 295.

**37-807. Separability.** — If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

**History.**

1941, ch. 141, § 2, p. 274.

#### STATUTORY NOTES

**Compiler's Notes.** 141, which is compiled as §§ 37-308 and The words "this act" refer to S.L. 1941, ch. §§ 37-801 to 37-807.

**37-808. Policy to improve dairy quality requirements.** — The legislature of the state of Idaho, recognizing that the dairy industry is basic to the economy of the state, that said industry does now and will continue to export all but a small percentage of its products to other states, that said products in order to find a market must be competitive and must be constantly improved to meet the quality requirements of said markets, hereby declares that the provisions of this act are vital to the economy of the state and the well being of its citizens.

**History.**

1959, ch. 82, § 1, p. 191.

#### STATUTORY NOTES

**Compiler's Notes.** 82, which is compiled as §§ 37-808, 37-810 The words "this act" refer to S.L. 1959, ch. and 37-811.

**37-809. Adoption of federal standards for certain dairy products.**  
[Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.** § 2, p. 191, was repealed by S.L. 1967, ch. 46, This section, comprising S.L. 1959, ch. 82, § 2.

**37-810. Administration of act — Publication of grade standards.** — This act shall be administered by the department. It shall be the duty of the department of agriculture of the state of Idaho to publish in pamphlet form the regulations heretofore referred to in this act, and to make said regulations now in effect and hereafter adopted immediately available to all interested parties in pamphlet form. The definition and grade standards now established and as established hereafter by the said United States

department of health, education and welfare and the United States department of agriculture shall be effective in the state of Idaho from and after the date on which they are published in said pamphlet form by the department of agriculture of the state of Idaho; provided that nothing in this chapter shall prohibit the manufacture, distribution or sale within the state of Idaho of cottage cheese containing less than four per cent (4%) butterfat, providing all other standards prescribed by law have been met and that the container be clearly labeled to indicate the low butterfat content as prescribed by regulations of the department of agriculture of the state of Idaho.

**History.**

1959, ch. 82, § 3, p. 191; am. 1965, ch. 163, 1992, ch. 93, § 30, p. 295.

§ 1, p. 316; am. 1974, ch. 23, § 42, p. 633; am.

1992, ch. 93, § 30, p. 295.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

**Federal References.**

The United States department of health, education and welfare, referred to in the second sentence, was reorganized, effective May 4, 1980, and succeeded by the department of health and human services. See 20 USCS § 3507.

The United States department of agriculture, referred to in the second sentence, is generally found at 7 USCS § 2201 et seq.

**Compiler's Notes.**

The words "this act" refer to S.L. 1959, ch. 82, which is compiled as §§ 37-808, 37-810 and 37-811.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided the act should be in full force and effect on and after July 1, 1974.

Section 32 of S.L. 1992, ch. 93 provided that the act should be in full force and effect on and after July 1, 1993.

**37-811. Compliance with naming and grading regulations required.** — From and after the effective date of this act all manufacturers, wholesalers, jobbers, processors, producers and distributors of milk, cream, butter, evaporated milk, condensed milk, non-fat dry milk, ice cream, cheese, frozen desserts and any other derivatives of milk or cream shall be, and they are hereby, required to comply with the regulations as adopted by the provisions of this act and to define, name, and grade their products in accordance therewith.

**History.**

1959, ch. 82, § 4, p. 191.

**STATUTORY NOTES****Compiler's Notes.**

The phrase "effective date of this act" refers to the effective date of S.L. 1959, ch. 82, which was May 8, 1959, sixty days after adjournment of the session.

The words "this act" refer to S.L. 1959, ch. 82, which is compiled as §§ 37-808, 37-810 and 37-811.

**37-812. Violations of law misdemeanor. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

This section, comprising S.L. 1959, ch. 82,

§ 5, p. 191, was repealed by S.L. 1967, ch. 46, § 3.

**37-813. Rules and regulations — Effect. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, comprising S.L. 1959, ch. 82, § 6, p. 191, was repealed by S.L. 1967, ch. 46,

§ 4.

**CHAPTER 9****LABELS AND BRANDS FOR DAIRY PRODUCTS****SECTION.**

37-901 — 37-907. [Repealed.]

**37-901 — 37-907. Labels and brands for dairy products. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised 1911, ch. 212, §§ 1 to 7, p. 685; reen. C.L. 65:78 to

65:84; C.S. §§ 1745 to 1751; I.C.A., §§ 36-601 to 36-607; 1974, ch. 23, § 43, p. 633, were repealed by S.L. 1991, ch. 30, § 6.

**CHAPTER 10****DISCRIMINATION AND UNFAIR COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS****SECTION.**

- 37-1001. Discrimination by buying at higher price — *Prima facie* evidence — Grades of cream.
- 37-1002. Discrimination by selling at lower price — Unfair discrimination defined.
- 37-1003. Special rebates, collateral contracts, and other devices.
- 37-1003a. Definitions.
- 37-1003b. Unfair and unlawful practices enumerated.
- 37-1003c — 37-1003f. [Repealed.]
- 37-1004. Penalties.
- 37-1005. Duty of director of department of agriculture.
- 37-1006. Prosecutions.

**SECTION.**

- 37-1007. Person injured may maintain action.
- 37-1008. Prohibited contracts void.
- 37-1009. Revocation of corporate charter.
- 37-1010. Separability.
- 37-1011. Definitions.
- 37-1012. Unlawful marketing practices in connection with sale of dairy products — Exceptions.
- 37-1013. Violation a misdemeanor — Penalty.
- 37-1014. Enjoining violations — Costs — Damages.
- 37-1015. Trade association may maintain action.

**37-1001. Discrimination by buying at higher price — *Prima facie* evidence — Grades of cream.** — a. Any person, firm, corporation or other organization, foreign or domestic, engaged in the business of buying milk, cream or butter fat for the purpose of manufacture, that shall discriminate between different sections, communities, towns, villages or cities of this state, by buying such commodity at a higher price or rate in one (1) section, community, town, village or city, than is paid for the same commodity by said firm, person, corporation or other organization in another section, community, town, village or city, after making due allowance for the difference, if any, in the actual cost of transportation from the point of

purchase to the locality of manufacture, shall be deemed guilty of unfair discrimination, which is hereby prohibited and declared unlawful.

b. Proof of the buying of any such commodity for the purpose of manufacture, by any person, firm, corporation or other organization at a higher price or rate in one (1) section, community, town, village or city of this state than is paid for the same commodity by the said person, firm, corporation or other organization in another section, community, town, village or city in this state after making due allowance for the difference, if any, in the actual cost of transportation from the point of purchase to the locality of manufacture, shall constitute *prima facie* evidence of a violation of this section.

c. Two (2) grades of cream shall be recognized in the enforcement of this chapter [act]: to be designated as sweet cream and sour cream. Sweet cream within the meaning of this chapter [act] shall be cream having a clean flavor, not more than two-tenths per cent (.2%) acidity, and not less than twenty-five per cent (25%) butter fat. Sour cream within the meaning of this chapter [act] shall be cream showing more than two-tenths per cent (.2%) acidity or less than twenty-five per cent (25%) butter fat.

#### **History.**

1923, ch. 121, § 1, p. 157; am. 1925, ch. 78, § 1, p. 112; I.C.A., § 36-1101.

#### **STATUTORY NOTES**

##### **Cross References.**

Penalties for violation of this chapter [act], § 37-1004.

section to its original language, which more clearly shows the relationship between the sections enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

##### **Compiler's Notes.**

The bracketed insertions in subsection c were added by the compiler to return the

**37-1002. Discrimination by selling at lower price — Unfair discrimination defined.** — Any person, firm, corporation or other organization, foreign or domestic, doing business in this state and engaged in the manufacture or distribution of any dairy product, that shall intentionally, for the purpose of destroying the competition of any regular, established dealer in such commodity or to prevent competition of any person who, in good faith, intends or attempts to become such dealer, discriminate between different sections, communities, towns, villages or cities of this state, by selling such commodity at a lower rate in one (1) section, community, town, village, or city, or any portion thereof, than such person, firm, corporation, or other organization, foreign or domestic, charges for such commodity in another section, community, town, village or city, after making due allowance for the difference, if any, in the cost of transportation from the point of production, if a raw product, or from the point of manufacture, if a manufactured product, shall be guilty of unfair discrimination which is hereby prohibited and declared unlawful. Any person, firm, corporation or other organization, foreign or domestic, doing business in this state and engaged in the purchase, sale, manufacture or distribution of any dairy product, that shall pay a price for any dairy product or do any act with the intention or for the purpose of creating a monopoly, or destroying the

business of a competitor in any locality, or restraining trade or preventing, stifling or limiting competition by any person in such business or who in good faith intends or attempts to engage in such business, shall be guilty of unfair discrimination which is hereby prohibited and declared unlawful.

**History.**

1923, ch. 121, § 2, p. 157; am. 1927, ch. 221,  
§ 1, p. 320; I.C.A., § 36-1102.

**37-1003. Special rebates, collateral contracts, and other devices.**

— The inhibition of this chapter [act] against locality discrimination shall embrace any scheme of special rebates, collateral contracts or any device of any nature whereby such discrimination is, in substance or fact, effected in violation of the spirit and intent of this chapter [act].

**History.**

1923, ch. 121, § 3, p. 157; I.C.A., § 36-1103.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertions in this section were added by the compiler to return the section to its original language, which more clearly shows the relationship between the

sections enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1003a. Definitions.** — As used in the following sections of this chapter:

“Distributor” means any person, whether or not such person is a producer or an association of producers, who purchases or handles market milk, market cream, or dairy products for resale, including brokers, agents, copartnerships, cooperative corporation and incorporated and unincorporated associations. The definition of “distributor” shall not include any of the following: (1) any retail store which is not engaged in manufacturing, processing or bottling milk, cream or dairy products; (2) any establishment where milk, cream, or dairy products are sold only for consumption on the premises and which is not engaged in manufacturing, processing, or bottling of milk, cream or dairy products; and (3) any producer who delivers milk or cream only to a distributor or manufacturer.

“Manufacturer” means any person engaged in the business of manufacturing dairy products as said products are herein defined.

“Producer” means any person who operates a dairy herd or herds producing milk or cream commercially and whose milk or cream is received or handled by any distributor or manufacturer. “Producers” includes any association of producers.

“Producer-distributor” means any person who is both a producer of milk or cream and a distributor of milk, cream or dairy products. For the purpose of this chapter a “producer-distributor” shall be deemed to be a producer in any transaction involving the delivering of milk or cream produced by him to a distributor or manufacturer, and shall be deemed to be a distributor in any transaction involving the sale of milk, cream, or dairy products to a person who is not a distributor as defined in this section.

"Retail store" means any person or persons owning or operating a retail grocery store, restaurant, confectionery, or other similar business where milk, cream, or dairy products are sold to the general public.

"Wholesale customer" means any person who buys milk, cream or dairy products from a distributor or manufacturer for resale to consumers.

"Consumer" means any person who buys milk, cream or dairy products for consumption and not for resale.

#### History.

I.C.A., § 36-1103A, as added by 1949, ch. 275, § 1, p. 560.

#### STATUTORY NOTES

##### Compiler's Notes.

Following the repeal of §§ 37-1003c to 37-1003f in 1963, the phrase "As used in the following sections of this chapter," at the beginning of the section, refers only to § 37-1003b.

The term "this chapter," referred to in the fifth paragraph, means S.L. 1949, ch. 275, which is codified as § 37-1003b and this section.

**37-1003b. Unfair and unlawful practices enumerated.** — In the marketing of milk, cream and dairy products the following methods of doing business or trade practices are hereby declared unfair and unlawful:

(a) The payment, allowance, or acceptance of secret rebates, secret refunds, or unearned discounts, whether in the form of money or otherwise, except as provided in paragraph (i) of this section.

(b) The giving of any milk, cream, dairy products, services, money, or articles of any kind except to bona fide charities for the purpose of securing or retaining the milk, cream, or dairy products business of any wholesale customer; provided, however, that nothing herein shall be construed to prohibit a distributor of frozen dairy products, frozen dessert and frozen novelties, for reasonable compensation as provided in section 37-1003c[*Idaho Code*], from furnishing a wholesale customer with, and maintaining such refrigeration facilities as shall be reasonably necessary for the storage and preservation of the frozen products distributed by such distributor to such wholesale customer; provided further, that the use of said refrigeration facilities by any person for the storage or preservation of any product other than the frozen products distributed to said wholesale customer by the distributor furnishing such facilities shall be an unfair and unlawful business practice.

(c) The extension to any wholesale customer or consumer of special prices or services not made available to all wholesale customers or consumers who purchase milk, cream, or dairy products of like quantity under like terms and conditions.

1. No payment, credit, or compensation may lawfully be allowed by a distributor to a wholesale customer for advertising or display in connection with the sale of a distributor's milk, cream, or dairy product.
2. No payment of money, or payment, or gift, or loan of anything of value may lawfully be given to a wholesale customer for the privilege of painting or placing a sign, advertisement, or other advertising material, or

otherwise advertising a distributor's products in, on, or adjoining any premises selling milk, cream or dairy products.

3. No outside advertising material permissible under this section may lawfully advertise items other than the distributor's milk, cream, and dairy products, and items made from the same, except not more than one-third (1/3) of the space on such advertising material may be allocated to the wholesale customer's name and products served in conjunction with milk, cream, and dairy products.

4. Inside advertising material furnished by a distributor of frozen dairy products shall be confined and limited to the advertising of the frozen dairy products manufactured by and/or distributed by the manufacturer or distributor of said frozen dairy products and/or their agents and may include the name, brands and description of the frozen dairy products of said manufacturer or distributor. Provided, further, that not more than one-third (1/3) of the space on such advertising material may be allocated to the wholesale customer's name and products served in conjunction with milk, cream, and dairy products.

(d) Any false or misleading advertising of milk, cream or dairy products.

(e) Discriminations in price between wholesale customers, or between consumers, who purchase milk, cream, or dairy products of like grade and quality under like conditions of service where the effect of such discrimination may be substantially to lessen competition or to injure or destroy or prevent competition with the person who either grants or knowingly receives the benefit of such discrimination; provided, that nothing herein shall prevent differentials which make only due allowance for differences in the cost of the raw product used in such milk, cream, or dairy products, or the cost of manufacture, processing, sale or delivery resulting from the different methods or quantities in which said commodities are manufactured, processed, sold or delivered.

(f) The sale of milk, cream, and dairy products at less than cost which, as used herein, shall mean the cost of raw product, plus all costs of manufacturing, processing, handling, sale and delivery, including overhead costs. Evidence of cost, based on impartial audits or surveys, made within a reasonable time prior to an alleged violation of this sub-paragraph [subsection] shall constitute *prima facie* proof of such cost at the time of the commission of such violation.

(g) False statements or representations, knowingly made, by any wholesale customer or consumer, or anyone acting on the behalf of either, to any distributor or manufacturer, or any representative thereof, that a competitor or such distributor or manufacturer has offered or is offering to sell, or is selling milk, cream, or dairy products to said wholesale customer or consumer at a lower price or prices than said manufacturer or distributor has offered or is offering to sell, or is selling the same, or that said competitor has offered or is offering to do, or is doing any of the business practices heretofore declared to be unfair and unlawful.

(h) The making or renewal of any money loans to any wholesale customer.

(i) The provisions of this chapter shall not prohibit the use of a discount coupon or the giving of an article in connection with the sale of dairy products to consumers, provided in doing so, the price of the dairy product is not lowered below its cost.

**History.**

I.C.A., § 36-1103B, as added by 1949, ch. 275, § 1, p. 560; am. 1983, ch. 36, § 1, p. 86.

**STATUTORY NOTES****Compiler's Notes.**

The term "this chapter," referred to in subsection (i), means S.L. 1949, ch. 275, which is codified as § 37-1003a and this section.

The bracketed insertion in subsection (b) was added by the compiler to conform to the

statutory citation style. Section 37-1003c was repealed by S.L. 1963, ch. 190, § 9.

The bracketed insertion in subsection (f) was added by the compiler to correct internal reference terminology.

**37-1003c — 37-1003f. Refrigeration facilities — Equipment — Sale — Competitive, conditions — Permissive practices — Collusion or joint participation prohibited. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised I.C.A., §§ 36-1103c — 36-1103f as added by 1949, ch.

275, § 1, p. 564, were repealed by 1963, ch. 190, § 9.

**37-1004. Penalties.** — a. Any person, firm, corporation or other organization, foreign or domestic, and any officer, agent or receiver of any firm, corporation or other organization, or any member of the same, or any individual, violating any of the provisions of this chapter [act], shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100.00 nor more than \$1000 for each offense, or be imprisoned in the county jail not to exceed six (6) months, or by both such fine and imprisonment, and, if a corporation, may have its charter or permit to do business in this state forfeited.

b. Any person who, either as officer, director or agent of any firm, corporation or other organization or as agent of any person, violating the provisions hereof, assists or aids, directly or indirectly, in such violation shall be responsible therefor equally with the person, firm, corporation or other organization for whom or which he acts. In the prosecution of any person or officer, director or agent it shall be sufficient to allege and prove the unlawful intent of the person, firm, corporation or other organization for whom or which he acts.

**History.**

1923, ch. 121, § 4, p. 157; I.C.A., § 36-1104.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in subsection a was added by the compiler to return the section to its original language, which more clearly shows the relationship between the sections

enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1005. Duty of director of department of agriculture.** —

a. Whenever the director of the department of agriculture is credibly informed that this chapter [act] has been violated, he shall make investigations and if the evidence justifies it he shall report the results of his investigation to the proper county attorney. He shall cooperate with such county attorney in the securing of evidence of violations of this chapter [act].

b. All the books, papers and other records of every person, firm, corporation or other organization engaged in the business of buying or selling dairy products, shall be subject to inspection by the director of this state or by his deputy, if it shall appear to the director that there are reasonable grounds to believe that there has been a violation of this chapter [act], and such person, firm, corporation or other organization shall, at such times as he shall prescribe, make such further verified returns having a bearing on the provisions of this chapter [act] as the director may prescribe.

**History.**

1923, ch. 121, § 5, p. 157; I.C.A., § 36-1106;  
am. 1974, ch. 18, § 261, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Compiler's Notes.**

The bracketed insertions in this section were added by the compiler to return the

section to its original language, which more clearly shows the relationship between the sections enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1006. Prosecutions.** — The various county attorneys in their respective counties shall institute, manage and direct all prosecutions for violations of this chapter [act]. It shall be the duty of the director of the department of agriculture to cooperate with and assist the county attorney in the county in which any such prosecution may be instituted or pending.

**History.**

1923, ch. 121, § 6, p. 157; I.C.A., § 36-1106;  
am. 1974, ch. 18, § 262, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Compiler's Notes.**

The bracketed insertion in this section was added by the compiler to return the section to its original language, which more clearly shows the relationship between the sections

enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**Effective Dates.**

Section 263 of S.L. 1974, ch. 18 provided the act should be in full force and effect on and after July 1, 1974.

**37-1007. Person injured may maintain action.** — Any person, firm, private corporation or municipal or other public corporation, may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this chapter [act] and, if injured thereby, for the recovery of

damages. If, in such action, the court shall find that the defendant is violating any of the provisions of this chapter [act], it shall enjoin the defendant from a continuance thereof; it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in such action shall be entitled to recover from the defendant three (3) times the amount of the actual damage, if any, sustained.

**History.**

1923, ch. 121, § 7, p. 157; I.C.A., § 36-1107.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertions in this section were added by the compiler to return the section to its original language, which more clearly shows the relationship between the

sections enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1008. Prohibited contracts void.** — All contracts or agreements made in violation of any of the provisions of this chapter [act] shall be void.

**History.**

1923, ch. 121, § 8, p. 157; I.C.A., § 36-1108.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in this section was added by the compiler to return the section to its original language, which more clearly shows the relationship between the sections

enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1009. Revocation of corporate charter.** — If complaint shall be made to the attorney-general that any corporation is guilty of unfair discrimination, as defined by the provisions of this chapter [act], he shall investigate such complaint and for that purpose he may subpoena witnesses, administer oaths, take testimony and require the production of books or other documents, and, if in his opinion sufficient grounds exist therefor, he may prosecute an action in the name of the state in the proper court to annul the charter or revoke the permit of such corporation, as the case may be, and to permanently enjoin such corporation from doing business in this state, and if in such action the court shall find that such corporation is guilty of unfair discrimination, as defined by the provisions of this chapter [act], such court shall annul the charter or revoke the permit of such corporation, and may permanently enjoin it from transacting business in this state.

**History.**

1923, ch. 121, § 9, p. 157; I.C.A., § 36-1109.

### STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.

**Compiler's Notes.**

The bracketed insertions in this section were added by the compiler to return the

section to its original language, which more clearly shows the relationship between the sections enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1010. Separability.** — If any section, sentence, clause or phrase of this chapter [act] is for any reason held to be unconstitutional such decision shall not affect the validity of the remaining portions of the chapter [act]. The legislature hereby declares that it would have passed this chapter [act], and such section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

**History.**

1923, ch. 121, § 10, p. 157; I.C.A., § 36-1110.

### STATUTORY NOTES

**Compiler's Notes.**

The bracketed insertions in this section were added by the compiler to return the section to its original language, which more clearly shows the relationship between the

sections enacted by S.L. 1923, ch. 121 [§§ 37-1001 to 37-1003 and 37-1004 to 37-1010] and, especially, the penalty provisions codified at § 37-1004.

**37-1011. Definitions.** — As used in this act:

- (a) The term "dairy products" shall include milk, milk without butterfat, cream, combinations of milk and cream, evaporated milk, condensed milk, flavored milk, milk drinks, buttermilk, cottage cheese, butter, ice milk and ice cream.
- (b) The term "distributor" means any person engaged in the business of distributing dairy products for resale.
- (c) The term "persons" shall include individuals, partnerships, associations, firms, corporations, bodies politic and bodies corporate.
- (d) The term "processor" means any person engaged in the business of processing or manufacturing dairy products.
- (e) The term "retail dealer" shall mean any person who sells or distributes dairy products at retail to the consumer.
- (f) The term "wholesaler" means any person engaged in the business of selling dairy products for resale.

**History.**

1963, ch. 190, § 2, p. 579; 1965, ch. 150, § 1, p. 289.

### STATUTORY NOTES

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

190, which is compiled as §§ 37-1011 to 37-1015.

Section 1 of S.L. 1963, ch. 190 read: "The practices being conducted by many dairy processors, wholesalers, and distributors in Idaho of selling below cost and in the subsidization of retail dealers through secret discounts, gifts, loans and other means and the furnishing of equipment, adversely affect the stable economy of Idaho. Such trade conduct

causes unfair price discrimination, destructive and predatory trade practices, tends to reduce the price paid to the dairy farmer, increases the price paid by the consumer, and misleads the public as to the true value of dairy products, and is detrimental to the public health and welfare."

**37-1012. Unlawful marketing practices in connection with sale of dairy products — Exceptions.** — It shall be unlawful for any person engaged in business as a wholesaler, processor, or distributor, individually or through or by affiliates, subsidiaries, associates, agents or stockholders, directly or indirectly, to do or cause to be done any of the following acts:

(a) Furnish, give, rent, lease, sell, or lend to a retail dealer or consumer any money, equipment, fixtures, including ice cream cabinets or bulk milk dispensers, supplies, or other things having a real or substantial value, or any expendable supplies commonly provided in connection with sales of dairy products to the consumer, (except that he may sell dairy products) except it shall be lawful to lend or rent ice cream cabinets, milk dispensers or milk coolers for periods of not to exceed ten (10) days in any one period of six (6) consecutive months to be used in community fairs and exhibits. Any existing arrangement covering any equipment or fixtures between any wholesaler, processor or distributor, on the one hand, and any retail dealer or consumer, on the other, shall become automatically terminated at the end of one hundred eighty (180) days after the effective date of this act (March 25, 1963). Any wholesaler, processor, or distributor owning any such equipment may, however, within one hundred eighty (180) days from the effective date of this act (March 25, 1963), sell such equipment to any retail dealer or consumer without being deemed in violation of this act, provided, however, that any such contract of sale shall terminate within thirty (30) months of the effective date of this act. All deferred payments on such contract shall carry interest at a rate of not less than six per cent (6%) per annum.

**History.**

1963, ch. 190, § 3, p. 579.

**STATUTORY NOTES**

**Compiler's Notes.**

For words "this act", see Compiler's Notes,  
§ 37-1011.

The words enclosed in parentheses so appeared in the law as enacted.

**37-1013. Violation a misdemeanor — Penalty.** — Any person who shall violate any of the provisions of this act shall be guilty of a misdemeanor. Each day during which, and each point at which a violation exists or continues shall constitute a separate offense. Upon conviction a person violating the terms of this act shall be punished by a fine of not more than five hundred dollars (\$500) for each violation.

**History.**

1963, ch. 190, § 4, p. 579.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch. 190, which is compiled as §§ 37-1011 to 37-

1015.

**37-1014. Enjoining violations — Costs — Damages.** — In addition to the penalties provided in this act, violations or threatened violations hereof may be enjoined. It shall be the duty of the attorney general or the appropriate county attorney to, and any person who shall suffer injury from or be threatened with injury from any existing or threatened violation of this act may, maintain an action in a court of equitable jurisdiction to prevent, restrain, or enjoin any violation or threatened violation. Upon the granting of such relief, the court shall assess in favor of the plaintiff and against the defendant the costs, including reasonable attorney's fees for plaintiff. Any damages suffered may be sued for and recovered in the same action and in addition to injunctive relief.

**History.**

1963, ch. 190, § 5, p. 579.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq. 190, which is compiled as §§ 37-1011 to 37-

1015.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1015. Trade association may maintain action.** — Any duly organized and existing trade association, whether incorporated or not, is hereby authorized to institute and prosecute a suit or suits for injunctive relief and costs, provided by this act, as the real party in interest for and on behalf of one or more of the members of such association, when violation of this act directly or indirectly affects or threatens to affect or injure such member or members, or where violation of this act threatens or otherwise affects such member as provided therein.

**History.**

1963, ch. 190, § 6, p. 579.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch. 190, which is compiled as §§ 37-1011 to 37-1015.

Section 8 of S.L. 1963, ch. 190, read: "The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the

constitutionality of this act and the applicability thereof to the state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed."

**Effective Dates.**

Section 7 of S.L. 1963, ch. 190 declared an emergency. Approved March 25, 1963.

## CHAPTER 11

### ACQUISITION OF RAW MILK

**SECTION.**

**37-1101. Acquisition of raw milk and raw milk products by owner.**

**37-1101. Acquisition of raw milk and raw milk products by owner.** — (1) The acquisition of raw milk or raw milk products from cows, sheep or goats by an owner of such cows, sheep or goats for use or consumption by the owner or members of the owner's household shall not constitute the sale or retail sale of raw milk or raw milk products and shall not be prohibited. The acquisition of raw milk or raw milk products from cows, sheep or goats by an owner of a cow share, sheep share or goat share for use or consumption by the owner or members of the owner's household shall not constitute the sale or retail sale of raw milk or raw milk products and shall not be prohibited provided the following conditions are met:

- (a) Unless otherwise permitted by the Idaho state department of agriculture, no more than seven (7) cows, fifteen (15) sheep or fifteen (15) goats may be kept as part of a cow share, sheep share or goat share program.
- (b) The owner of a cow share, sheep share or goat share shall receive raw milk or raw milk products directly from the farm or dairy where the cow, sheep, goat or dairy herd is located and the farm or dairy shall be registered pursuant to subsection (2) of this section. A person who is the owner of a cow share, sheep share or goat share in a cow, sheep, goat or dairy herd may receive raw milk or raw milk products on behalf of another owner of the same cow, sheep, goat or dairy herd. A person who is not an owner of a cow share, sheep share or goat share in the same cow, sheep, goat or dairy herd shall not receive raw milk or raw milk products on behalf of the owner of a cow share, sheep share or goat share.
- (c) The raw milk or raw milk products are obtained pursuant to the ownership of a cow, sheep, goat, cow share, sheep share or goat share. A cow share, sheep share or goat share is an undivided ownership interest in a cow, sheep, goat or herd of cows, sheep or goats, created by a written contractual relationship between an owner and a farmer that includes a bill of sale, stock certificate or other written evidence satisfactory to the director of the Idaho state department of agriculture of a bona fide ownership interest in the cow, sheep, goat or dairy herd. Such written contractual relationship shall also include boarding terms under which the cow, sheep, goat or dairy herd are boarded, milked and cared for. Such written contractual relationship shall also clearly set forth that the share owner is entitled to receive a share of milk or milk products from the cow, sheep, goat or dairy herd and contain a conspicuous notification that the milk or milk products are raw and not pasteurized.
- (d) Information describing the standards used by the farm or dairy with respect to herd health, and in the production of milk from the herd, is provided to the share owner by the farmer together with results of tests performed on the cows, sheep or goats that produced the milk, tests performed on the milk and an explanation of the tests and test results.

(e) A farm or dairy operating a cow share, sheep share or goat share program with more than three (3) cows, seven (7) sheep or seven (7) goats shall test such raw milk or raw milk products at a frequency of at least four (4) separate months during any consecutive six (6) month period. Each batch of raw milk shall test negative for drugs. Milk quality tests and drug tests shall be conducted utilizing testing methods approved by the Idaho state department of agriculture. In no event shall such raw milk or raw milk products contain:

- (i) More than fifteen thousand (15,000) bacteria per milliliter;
- (ii) More than twenty-five (25) coliform per milliliter;
- (iii) More than five hundred thousand (500,000) somatic cells per milliliter of raw milk from a cow or more than seven hundred fifty thousand (750,000) somatic cells per milliliter of raw milk from a sheep or goat.

(f) Whenever three (3) of the last five (5) consecutive bacteria, coliform, or somatic cell tests exceeds any of the milk quality standards listed in this section, the cow share, sheep share or goat share owners shall be notified and no milk shall be offered for human consumption until such time it meets the standard.

(g) Milk testing positive for drugs shall not be used for human consumption.

(h) All cows, sheep or goats kept as part of a cow share, sheep share or goat share program shall be tuberculosis and brucellosis free and shall be tested for tuberculosis and brucellosis annually.

(2) Registration of a farm or dairy as required by subsection (1)(b) of this section shall be accomplished by delivering to the Idaho state department of agriculture a written statement containing:

- (a) The name of the farmer, farm or dairy;
- (b) A valid, current address of the farmer, farm or dairy; and
- (c) A statement that raw milk or raw milk products are being produced at the farm or dairy.

(3) No person who obtains raw milk or raw milk products in accordance with this section shall sell such raw milk or raw milk products. Unless otherwise permitted by the Idaho state department of agriculture, it shall be unlawful for an owner of a cow, sheep, goat, cow share, sheep share or goat share to sell, offer for sale or advertise for sale to any person or distribute to any restaurant or food establishment, grocery store or farmers market any raw milk or raw milk products produced as provided herein. Any person who violates the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be subject to a fine not exceeding two hundred dollars (\$200) or imprisonment in the county jail not to exceed three (3) months, or by both such fine and imprisonment. The director of the Idaho state department of agriculture may bring civil actions to enjoin violation of the provisions of this section.

(4) No producer of raw milk or raw milk products as provided in this section shall publish any statement that implies approval or endorsement by the Idaho state department of agriculture.

(5) The Idaho state department of agriculture is charged with the responsibility of administration and enforcement of this chapter and is

empowered to promulgate and enforce rules not inconsistent with this chapter.

(6) The Idaho state department of agriculture is authorized to issue a hold order to stop the distribution of raw milk or raw milk products when it is deemed necessary to protect human health.

**History.**

I.C., § 37-1101, as added by 2010, ch. 359, § 1, p. 944.

#### STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.

**Prior Laws.**

Former chapter 11 of title 37 titled "Filled Milk", which comprised the following sections, was repealed by S.L. 1996, ch. 85, § 1, effective July 1, 1996:

§ 37-1101, which comprised 1923, ch. 37, § 1, p. 43; I.C.A., § 36-501; am. 1955, ch. 149, § 1, p. 296.

§ 37-1102, which comprised 1923, ch. 37, § 2, p. 43; I.C.A., § 36-502.  
 § 37-1103, which comprised 1923, ch. 37, § 3, p. 43; I.C.A., § 36-503.  
 § 37-1104, which comprised 1923, ch. 37, § 4, p. 43; I.C.A., § 36-504.

**Effective Dates.**

Section 2 of S.L. 2010, ch. 359 declared an emergency. Approved April 11, 2010.

## CHAPTER 12

### ICE CREAM AND FROZEN DESSERTS

SECTION.

37-1201. Definitions.

37-1202. Labeling and advertising frozen desserts and frozen novelties.

37-1203. Violations unlawful.

SECTION.

37-1204. Penalties.

37-1205. Enforcement and duties of department of agriculture.

**37-1201. Definitions.** — For the purpose and within the meaning of this act, the term "frozen desserts and frozen novelties" shall be defined as provided in regulations promulgated by the director of the department of agriculture.

**History.**

1949, ch. 44, § 1, p. 77; am. 1949, ch. 201, § 1, p. 418; am. 1963, ch. 123, § 1, p. 352; am.

1977, ch. 308, § 1, p. 879; am. 1979, ch. 118, § 1, p. 365.

#### STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

**Compiler's Notes.**

The words "this act" refer to S.L. 1949, ch. 44, which is compiled as §§ 37-1201 to 37-1205.

Acts 1949, ch. 44, § 6, repealed Acts 1933, ch. 162, as amended. This had the effect of repealing §§ 37-1201, 37-1202, 37-1203 of the Idaho Code. However, since the 1949 act covered the same subject matter it has been given the same section numbers as the 1933 act with such additional sections as the new act made necessary.

**37-1202. Labeling and advertising frozen desserts and frozen novelties.** — (a) All packages and containers used in the sale and distribution of frozen desserts or frozen novelties shall bear a label. The label

shall plainly give the name of the product as defined in regulations promulgated by the director of the department of agriculture, and if a trade or brand name is used, the name of the product shall be in letters at least one-half the size of the letters of such brand or trade name. The label shall also bear the name and address of the manufacturer or distributor.

(b) Wherever any frozen desserts or frozen novelties are sold or dispensed over counters, through machines, or in any other manner than in labeled cartons, packages or containers, the seller or dispenser thereof shall in his advertising or his offer to sell or dispense such product plainly display the name of the product as defined in regulations promulgated by the director of the department of agriculture in letters at least one-half of the size of the letters of the trade or brand name. When any frozen dessert or frozen novelty is sold or dispensed, other than in packages or containers, without any advertising or the use of a trade or brand name, the seller or dispenser thereof shall conspicuously display at the counter, machine or place where the product is sold or dispensed, a sign with letters at least four (4) inches high describing the product so sold or dispensed.

**History.**

1949, ch. 44, § 2, p. 77; am. 1977, ch. 308, § 2, p. 879; am. 1979, ch. 118, § 2, p. 365.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**Effective Dates.**

Section 3 of S.L. 1977, ch. 308 declared an emergency. Approved March 31, 1977.

**37-1203. Violations unlawful.** — It shall be unlawful for any person, partnership, firm or corporation to manufacture, dispense, sell or offer to sell any frozen dessert or frozen novelty which does not conform to the standards set forth in this act, and it shall be unlawful to manufacture, sell, offer for sale or dispense such frozen desserts or frozen novelties without having and displaying the appropriate labels and signs required by section 37-1202, Idaho Code. It shall be unlawful to manufacture, sell, offer to sell or dispense any frozen dessert or frozen novelty, whether herein defined or not, unless the same shall conform to one (1) of the definitions or standards herein described.

**History.**

1949, ch. 44, § 3, p. 77; am. 1992, ch. 93, § 31, p. 295.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1949, ch. 44, which is compiled as §§ 37-1201 to 37-1205.

**Effective Dates.**

Section 32 of S.L. 1992, ch. 93 provided that the act should be in full force and effect on and after July 1, 1993.

**37-1204. Penalties.** — Any person, partnership, firm or corporation violating, or who shall fail to comply with, the preceding sections, or any

part, provision, or section thereof, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than ten dollars (\$10.00) and not exceeding three hundred dollars (\$300.00), or by imprisonment in the county jail for a period of not exceeding six (6) months, or both such fine and imprisonment.

**History.**

1949, ch. 44, § 4, p. 77.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

**37-1205. Enforcement and duties of department of agriculture.**

— Enforcement of this act shall be in the department of agriculture of the state of Idaho and it shall be the duty of such department to exercise and supervise and conduct such investigations as may be necessary for the enforcement of this act.

**History.**

1949, ch. 44, § 5, p. 77.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

**Compiler's Notes.**

The words "this act" refer to S.L. 1949, ch. 44, which is compiled as §§ 37-1201 to 37-1205.

Section 6 of S.L. 1949, ch. 44, provides as follows: "Chapter 162 of the Idaho Session Laws of 1933, as amended, be, and the same is hereby repealed."

**CHAPTER 13****LICENSING OF DEALERS IN DAIRY PRODUCT SUBSTITUTES****SECTION.**

37-1301 — 37-1307. [Repealed.]

**37-1301 — 37-1307. Schedule of fees — Licenses — Disposition of fees and fines — Reports — Violation — Duty of attorney general — Effect. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised S.L. 1929, ch. 70, §§ 1 to 7, p. 108; I.C.A., §§ 36-901 to 36-907; am. 1933, ch. 47, § 4, p. 75; am. 1949,

ch. 13, § 1, p. 13; am. 1950 (E. S.), ch. 12, § 1, p. 23, were repealed by S.L. 1968 (2nd E. S.), ch. 4, § 1.

## CHAPTER 14

### TAX ON SALE OF OLEOMARGARINE PRODUCTS

## SECTION.

37-1401 — 37-1408. [Repealed.]

**37-1401 — 37-1408. Oleomargarine tax — Procedure — Penalties — Regulations. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1931, ch. 93, §§ 1 to 9, p. 157; I.C.A., §§ 36-1002 to 36-1009; am. 1933, ch. 47, § 5, p. 75; am. 1950

(E. S.), ch. 12, § 2, p. 23; am. 1951, ch. 195, §§ 1, 2, 4, 5, p. 416; am. 1961, ch. 289, § 1, p. 513, were repealed by S.L. 1967, ch. 212, § 1.

## CHAPTER 15

### EGGS AND EGG PRODUCTS

## SECTION.

37-1501. Terms defined.

37-1502. Sale when unfit for human food unlawful.

37-1503. Eggs in the shell.

37-1504. Eggs other than in the shell and egg products.

37-1505. Serving in restaurants, hotels and other establishments.

37-1506. Manufacture or sale of food products containing eggs or egg products.

37-1507. Violation a misdemeanor.

37-1508 — 37-1518. [Repealed.]

37-1519. Purpose.

37-1520. Definitions.

## SECTION.

37-1521. Regulations for grades and standards.

37-1522. Licenses.

37-1523. Fees — Renewal.

37-1523A. Assessments — Exemptions to assessments — Prepayment — Audit.

37-1524. Statements on container.

37-1525. Records — Enforcement.

37-1526. Violation a misdemeanor — Penalties.

37-1527. Director's discretionary action.

37-1528. Duty to prosecute.

37-1529. Right to injunction.

37-1530. Contracts with federal government.

**37-1501. Terms defined.** — The word "eggs" whenever used in this act shall mean and include foreign eggs in the shell, and the words "foreign eggs" shall mean and include eggs produced in any foreign country, and egg products manufactured from eggs produced in any foreign country.

The word "egg products" whenever used in this act shall mean and include egg powder, powdered eggs, dried eggs, liquid frozen eggs, and any other product, by whatsoever trade name designated, manufactured from foreign eggs or any part thereof.

**History.**

1939, ch. 218, § 1, p. 460.

#### STATUTORY NOTES

**Cross References.**

Imported meat, poultry, eggs, and butter, label requirements, § 37-1604.

218, §§ 1 to 7, which is compiled as §§ 37-1501 to 37-1507.

**Compiler's Notes.**

The words "this act" refer to S.L. 1939, ch.

**37-1502. Sale when unfit for human food unlawful.** — It shall be unlawful for any person to sell, offer or expose for sale, in this state, any eggs or egg products unfit for human food; and for the purpose of this act, an egg shall be deemed unfit for human food when it is addled, putrid, rotten, in whole or in part; when the yolk is stuck to the shell; the inside contains molds, black spots or black rot, heavy blood spots or rings or bloody whites, or an incubated egg as defined in this act; or any material of an unwholesome nature; and egg products shall be deemed unfit for human food when manufactured from eggs unfit for human food.

**History.**

1939, ch. 218, § 2, p. 460.

**STATUTORY NOTES**

**Compiler's Notes.** 218, §§ 1 to 7, which is compiled as §§ 37-1501 to 37-1507.  
The words "this act" refer to S.L. 1939, ch.

**37-1503. Eggs in the shell.** — It shall be unlawful for any person to sell, offer or expose for sale in this state any foreign eggs in the shell, without having stamped on each such egg, in legible type and in durable indelible ink, the words "Foreign Produced Eggs From \_\_\_\_\_" and the name of the country in which such egg is produced.

**History.**

1939, ch. 218, § 3, p. 460.

**37-1504. Eggs other than in the shell and egg products.** — It shall be unlawful for any person to sell, offer or expose for sale in this state any foreign eggs in any other form than in the shell, or any egg products manufactured from foreign eggs, without having stamped or printed in legible type in letters two inches (2") high, in durable paint or ink on the side and on the cover of each container the words "Foreign Produced Eggs From \_\_\_\_\_," following [followed] by the name of the country in which such eggs were produced, or in which the eggs from which such egg products were manufactured were produced.

**History.**

1939, ch. 218, § 4, p. 460.

**STATUTORY NOTES**

**Compiler's Notes.** were inserted by the compiler to supply the  
The bracketed words "form" and "followed" probable intended words.

**37-1505. Serving in restaurants, hotels and other establishments.** — It shall be unlawful for any person owning or operating any restaurant, hotel, cafe, coffee shop, or other place where food is served, or any bakery or confectionery shop where food products are sold, to serve or sell any foreign eggs or egg products manufactured from foreign eggs without posting and maintaining in a conspicuous place where the customers entering any such place of business can see it, a placard or sign bearing

the words "We Use Foreign Produced Eggs" printed or painted in legible letters not less than two inches (2") high.

**History.**

1939, ch. 218, § 5, p. 460.

**37-1506. Manufacture or sale of food products containing eggs or egg products.** — It shall be unlawful for any person manufacturing and/or selling any food products containing eggs or egg products to sell, offer or expose for sale in this state any food products containing foreign eggs, or egg products manufactured from foreign eggs, without having printed on the outside of the wrapper or container of each such food product in legible letters of bold faced type of a size not less than 8-point, the words "Foreign Eggs Used in This Product," or if such products are sold, offered or exposed for sale in bulk without displaying in a conspicuous place at the point where such food products are offered or exposed for sale, a placard or sign printed in letters two inches (2") high, and containing the words "Foreign Eggs Used in This Product."

**History.**

1939, ch. 218, § 6, p. 460.

**37-1507. Violation a misdemeanor.** — Any person who violates or fails to comply with any of the provisions of this act shall be guilty of a misdemeanor.

**History.**

1939, ch. 218, § 7, p. 460.

#### STATUTORY NOTES

**Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

218, §§ 1 to 7, which is compiled as §§ 37-1501 to 37-1507.

**Compiler's Notes.**

The words "this act" refer to S.L. 1939, ch.

**37-1508 — 37-1518. Eggs, grades and standards — Licenses — Official seals — Improper designation — Records — Quality — Enforcement of act — Penalty. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1953, ch. 148, §§ 1-12, p. 241, were repealed by S.L. 1963, ch. 143, § 13.

**37-1519. Purpose.** — The legislature of the state of Idaho recognizes that the candling, storing, grading, packing, selling, peddling, distributing, labeling, dealing in and trading in eggs in the state of Idaho is in the public interest and hereby declares that the provisions of this act are vital to the economy of the state of Idaho and the well being of its citizens.

The purpose of this act is to establish standards of grades for eggs and

authorize standards of sanitation, cleanliness and temperature for the handling and storage of eggs for sale in the state of Idaho, and to require compliance with the labeling regulations and the designation of the grade of eggs sold in the state of Idaho.

**History.**

1963, ch. 143, § 1, p. 406.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch. 1523 and 37-1524 to 37-1529.

**37-1520. Definitions. —** When used in this act:

- (a) The term "candling" shall refer to the act or function of determining the grade of eggs; and the term "candler" shall refer to the person performing that act or function.
- (b) The term "carton" shall mean a container containing one (1) dozen eggs.
- (c) The term "director" shall refer to the director of the department of agriculture.
- (d) The term "consumer" shall mean a person who purchases eggs or egg products for use as food and not for resale in any form.
- (e) The term "container" shall mean any carton, case, box, basket, sack, bag or other receptacle.
- (f) The term "dealer" or "egg handler" shall mean any person who acquires eggs or egg products from a producer or distributor for resale to consumers.
- (g) The term "distributor" shall refer to any person having possession or control of eggs or egg products for the purpose of candling, grading, packing, selling, peddling, distributing, dealing in or trading in eggs or egg products for resale to a dealer in the state of Idaho, but shall not refer to a producer when engaging in the sale of eggs or egg products to a distributor or when engaging in the sale of eggs directly to a consumer at the place of production.
- (h) The term "grade" when used as a verb shall mean to classify eggs as to quality and size, and when used as a noun shall mean the classification as to quality and size so established.
- (i) The term "person" shall include an individual, partnership, corporation, firm, association and agent.
- (j) The term "producer" shall mean a person engaged in the business of operating or controlling the operation of one or more farms, ranches or establishments on which eggs or egg products are produced in the state of Idaho.
- (k) The term "sale" or "sell" or "selling" or "sold" shall include sale, offer of sale, display for sale, have in possession for sale, exchange, barter, trade or other dealing.
- (l) "Intrastate commerce" means any eggs or egg products in intrastate commerce whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported or handled in this state in any manner and prepared for eventual distribution in this state whether at wholesale or retail.

**History.**

1963, ch. 143, § 2, p. 406; am. 1969, ch. 39, § 1, p. 97; am. 1974, ch. 18, § 173, p. 364; am.

1975, ch. 175, § 1, p. 477; am. 1982, ch. 26, § 1, p. 51.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

143, which is compiled as §§ 37-1519 to 37-1523 and 37-1524 to 37-1529.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1521. Regulations for grades and standards.** — The director of the department of agriculture shall issue regulations for the enforcement of this act which regulations shall have the force and effect of law. Such regulations may relate to all phases of inspection and grading of eggs and egg products and to the sanitation and conditions of eggs and egg product production, storage and transportation. In arriving at such regulations the director shall consider all pertinent federal egg and egg product laws and regulations.

**History.**

1963, ch. 143, § 3, p. 406; 1965, ch. 8, § 1, 1974, ch. 18, § 174, p. 364.

p. 9; rep. & reen. 1969, ch. 39, § 2, p. 97; am.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

S.L. 1969, ch. 39, which is compiled as §§ 37-1520, 37-1521, and 37-1530. Probably the reference should read "this chapter", being chapter 15, title 37, Idaho Code.

**Compiler's Notes.**

The term "this act" in this section refers to

**37-1522. Licenses.** — (a) No person shall act as a distributor of eggs in the state of Idaho without first obtaining a license therefor from the director for each physically separate establishment at which such business is conducted.

(b) No producer or distributor shall engage in candling eggs for official grade designation in the state of Idaho without first obtaining a license therefor from the director. Each producer or distributor who candles or assigns grades to eggs shall have or designate an individual candler who shall be responsible for making this determination.

(c) Each application for a license under this act shall be in writing upon forms prescribed by the director, and shall be accompanied by the annual license fee contemplated in section 37-1523, Idaho Code.

(d) Each license shall be in a form prescribed by the director and shall bear the license number assigned to each licensee.

(e) The license of a distributor shall be conspicuously displayed and posted at the separate establishment for which that license is issued. The license of an egg candler shall be conspicuously displayed and posted at the place of business where that egg candler is performing those services.

(f) The director shall refuse to issue a license to a distributor or egg candler who at the time of application therefor is not complying fully with the regulations and standards adopted, established and prescribed therefor

under the provisions of this act; and shall be empowered to revoke or suspend a license issued to a distributor or egg candler upon determination of noncompliance with these regulations and standards or during the period of noncompliance with these regulations and standards.

**History.**

1963, ch. 143, § 4, p. 406; am. 1974, ch. 18, § 175, p. 364; am. 1982, ch. 26, § 2, p. 51.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101. 143, which is compiled as §§ 37-1519 to 37-1523 and 37-1524 to 37-1529.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1523. Fees — Renewal.** — (a) The annual license fee for each physically separate establishment of a distributor shall be twenty dollars (\$20.00). The annual license fee for each egg candler shall be five dollars (\$5.00). The period for which the license fee is paid and for which the license is issued shall be July first to and including the following June thirtieth, and if the license is issued within that period the license fee shall nevertheless be the full amount above stated. Each license shall be renewed on July first of each year.

(b) All license fees, assessments and moneys collected by the director under the provisions of this act shall be placed in a separate fund in the state treasury to be used by the director solely for the purpose of inspection, administration and the enforcement of this act.

**History.**

1963, ch. 143, § 5, p. 406; am. 1974, ch. 18, § 176, p. 364; am. 1975, ch. 175, § 2, p. 477; am. 1982, ch. 26, § 3, p. 51.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101. 143, which is compiled as §§ 37-1519 to 37-1523 and 37-1524 to 37-1529.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1523A. Assessments — Exemptions to assessments — Prepayment — Audit.** — (1) There is hereby levied an assessment not to exceed four (4) mills per dozen eggs (4/10 of a cent per dozen eggs) entering intrastate commerce as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce in retail cartons. Such assessment shall be paid to the department of agriculture on a monthly basis on or before the 25th day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers, dealers, or distributors along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purpose of this act. The director, may

by regulations, require egg container manufacturers to report on a monthly basis on agriculture containers sold to any egg handler, dealer or distributor.

(2) The assessment provided in this section shall not apply to:

(a) Sale and shipment to points outside of this state;

(b) Sale to the United States government and its instrumentalities;

(c) Sale to breaking plants for processing into egg products;

(d) Sale to consumers at the place of production or processing;

(e) Sale between egg distributors;

(f) Idaho shell egg producers having three hundred (300) or less hens may sell ungraded shell eggs produced upon their premises to retailers, provided that each carton or other container of ungraded shell eggs sold shall be clearly marked "ungraded" and shall bear the name and address of the Idaho producer.

(3) Any egg handler, dealer or distributor may prepay the assessment provided for in subsection (1) of this section by purchasing Idaho state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer may apply to the director for a permit to place reasonable facsimiles of the Idaho state egg seals to be imprinted on egg containers. The director shall from time to time prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter whenever he finds that a violation of the terms of which the permit has been granted has been violated.

(4) Every egg handler, dealer or distributor who pays assessments required under the provisions of this section on a monthly basis in lieu of seals shall be subject to audit by the director on an annual basis or more frequently if necessary. Failure to pay assessments when due or refusal to allow an audit may be cause for a suspension or revocation of an egg handler, dealer or distributor's license. The conditions and assessments applicable to egg handlers, dealers and distributors set forth in section 37-1523, Idaho Code, shall also be applicable to payments to the director for facsimiles of seals placed on egg containers.

**History.**

I.C., § 37-1523A, as added by 1975, ch. 175, § 3, p. 477; am. 1982, ch. 26, § 4, p. 51; am.

1987, ch. 21, § 1, p. 27.

**STATUTORY NOTES**

**Cross References.**

Department of agriculture, § 22-101 et seq.

"this chapter", being chapter 15, title 17, Idaho Code.

The words in parentheses so appeared in the law as enacted.

**Compiler's Notes.**

The term "this act", near the end of subsection (1), refers to S.L. 1975, ch. 175, which is compiled as §§ 37-1520 and 37-1523 to 37-1524. Probably the reference should be to

**Effective Dates.**

Section 2 of S.L. 1987, ch. 21 declared an emergency. Approved March 2, 1987.

**37-1524. Statements on container.** — (a) Each carton or other container in which eggs are being sold or offered for sale by a distributor, egg handler or dealer in the state of Idaho shall bear:

(1) A legible statement of the grade and size of eggs.

- (2) A legible statement of the name and address of the distributor by or for whom the eggs were graded and candled.
- (b) The words "fresh," "country," "hennery," "ranch" or words of similar import shall not be deemed a substitute for official grade designation. Each advertisement of eggs for sale by a dealer shall plainly and conspicuously indicate the official grade and size thereof.

**History.**

1963, ch. 143, § 6, p. 406; am. 1974, ch. 18, § 177, p. 364; am. 1975, ch. 175, § 4, p. 477.

**37-1525. Records — Enforcement.** — The director is hereby directed and empowered:

- (a) To administer and enforce the provisions of this act.
- (b) To require records to be kept. Every distributor and dealer purchasing or selling eggs in the state of Idaho shall keep a record of each purchase and a record of each sale other than to a consumer. Such record may be an invoice or sales slip and shall show the date of such transaction and the name and address of the person with whom such transaction was made. Such records shall be held for a period of at least two (2) years and shall be open for examination by a representative of the director at any reasonable time.
- (c) To require each person who sells to any retailer, or to any restaurant, hotel, boarding house, baker, or other institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food products for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality and the size or weight of the eggs sold, according to the standards prescribed, together with the name and address of the person by whom the eggs were sold.
- (d) Through authorized representatives to enter and inspect any place or conveyance of a distributor or dealer within the state of Idaho where eggs are candled, stored, packed, delivered for shipment, loaded, shipped, transported or sold, and may inspect all invoices, eggs and the cases and containers thereof and equipment found in such places or conveyances, and may take copies of invoices and representative samples of eggs and the cases and containers thereof found in such places or conveyances for inspection and for the purpose of determining whether or not any provisions of this act have been violated.
- (e) Through authorized representatives to seize and hold as evidence an advertisement, sign, placard, invoice, case or container of eggs, or such part of any pack, load, lot, consignment or shipment of eggs packed, stored, delivered for shipment, loaded, shipped, transported or sold in violation of any provision of this act, reasonably necessary to establish the fact of such violation.

**History.**

1963, ch. 143, § 7, p. 406; am. 1974, ch. 18,  
§ 178, p. 364; am. 1982, ch. 26, § 5, p. 51.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-  
101.

143, which is compiled as §§ 37-1519 to 37-  
1523 and 37-1524 to 37-1529.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1526. Violation a misdemeanor — Penalties.** — Any person convicted of violating any provisions of this act or the rules and regulations issued thereunder or who shall impede, obstruct, hinder, or otherwise prevent or attempt to prevent the director or his duly authorized representative in performance of his duty in connection with the provisions of this act, shall be adjudged guilty of a misdemeanor and shall be fined not more than one hundred dollars (\$100) for the first violation, and not less than one hundred dollars (\$100) or more than three hundred dollars (\$300) for a subsequent violation.

**History.**

1963, ch. 143, § 8, p. 406; am. 1974, ch. 18,  
§ 179, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-  
101.

143, which is compiled as §§ 37-1519 to 37-  
1523 and 37-1524 to 37-1529.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1527. Director's discretionary action.** — Nothing in this act shall be construed as requiring the director or his representative to report for prosecution or for the institution of seizure proceeding a minor violation of the act when he believes that the public interest will be best served by a suitable warning notice in writing.

Before the director reports a violation for such prosecution, an opportunity shall be given the person in asserted violation to present his understanding of the facts to the director.

**History.**

1963, ch. 143, § 9, p. 406; am. 1974, ch. 18,  
§ 180, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-  
101.

143, which is compiled as §§ 37-1519 to 37-  
1523 and 37-1524 to 37-1529.

**Compiler's Notes.**

The words "this act" refer to S.L. 1963, ch.

**37-1528. Duty to prosecute.** — It shall be the duty of each prosecuting attorney to whom any violation is reported to cause appropriate proceedings to be instituted and prosecuted without delay in a court of competent jurisdiction.

**History.**

1963, ch. 143, § 10, p. 406.

**37-1529. Right to injunction.** — The director is hereby authorized to apply for and the court to grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this act or any rules or regulations promulgated under this act notwithstanding the existence of other remedies at law, said injunction to be issued without bond.

**History.**

1963, ch. 143, § 11, p. 406; am. 1974, ch. 18, § 181, p. 364.

#### STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.”

**Compiler's Notes.**

The words “this act” refer to S.L. 1963, ch. 143, which is compiled as §§ 37-1519 to 37-1523 and 37-1524 to 37-1529.

Section 12 of S.L. 1963, ch. 143 read: “If any clause, sentence, paragraph or part of this act shall for any reason be adjudged invalid by any court of competent jurisdiction, such

**Effective Dates.**

Section 14 of S.L. 1963, ch. 143 provided the act should take effect from and after July 1, 1963.

**37-1530. Contracts with federal government.** — The director of the department of agriculture may with the approval of the governor contract with any agency or subdivision of the federal government in relation to egg or egg product inspection, and may also receive on behalf of state egg or egg product inspection or for federal egg or egg product inspection, funds from any division or agency of the federal government.

**History.**

I.C.A., § 37-1530, as added by 1969, ch. 39, § 3, p. 97; am. 1974, ch. 18, § 182, p. 364.

#### STATUTORY NOTES

**Cross References.**

Director of department of agriculture, § 22-101.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 263 of S.L. 1974, ch. 18 provided the

## CHAPTER 16

### IMPORTED FOOD PRODUCTS

**SECTION.**

37-1601 — 37-1603. [Repealed.]  
 37-1604. Sale of imported food products — Label requirements — Definitions.  
 37-1605. Administration of act — Inspection and sampling.

**SECTION.**

37-1606. Labeling of products containing imported meat.  
 37-1607. Injunctive power to enforce law.  
 37-1608. Duty of county attorneys.  
 37-1609. Rules and regulations.  
 37-1610. Penalty.

**37-1601 — 37-1603. Meat, poultry, eggs and butter — Label requirements — Notice of sale — Penalty. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1921, ch. 188, §§ 1 to 3, p. 390; I.C.A., §§ 36-1401 to

36-1403, were repealed by S.L. 1965, ch. 78, § 8.

**37-1604. Sale of imported food products — Label requirements — Definitions.** — Every wholesaler or retailer who sells or offers for sale in the state of Idaho through a meat market, store or otherwise, any meats, either frozen, canned, cured, processed, or any mixture thereof, or any poultry, eggs or butter which are the products of any country foreign to the United States, shall clearly label such meat, poultry, eggs or butter as "imported," naming the country of its origin, the date it was originally packaged, whether it was frozen, and the date or dates it was subsequently refrozen, if any, which labeling shall be in lettering not less than one-half inch (1/2") in height. As used in this act: (a) the word "wholesaler" shall mean a person regularly engaged in the business of selling meat, canned, frozen, cured or processed, or poultry, eggs or butter for resale; (b) the word "retailer" shall mean a person regularly engaged in the business of selling meat, canned, frozen, cured or processed, or poultry, eggs or butter at retail to the trade and public as such, and selling only to the user or consumer and not for resale; (c) the word "meat" means the dressed flesh of cattle, swine, horses, sheep or goats but shall not include fish or products of fish.

**History.**

1965, ch. 78, § 1, p. 127; am. 1984, ch. 127, § 1, p. 302.

#### STATUTORY NOTES

**Cross References.**

Eggs and egg products, § 37-1501 et seq. 78, which is compiled as §§ 37-1604 to 37-1610.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**37-1605. Administration of act — Inspection and sampling.** — It shall be the duty of the state department of agriculture to administer and enforce the provisions of this act. The state department of agriculture or its

duly authorized agents shall have free access at all reasonable hours to every wholesale and retail establishment which sells or offers to sell meat, poultry, eggs or butter to the public and may enter any vehicle being used to transport any such meat, poultry, eggs or butter for the purpose of inspecting the products therein, and to secure samples or specimens of such meat or products.

**History.**

1965, ch. 78, § 2, p. 127.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

78, which is compiled as §§ 37-1604 to 37-1610.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**37-1606. Labeling of products containing imported meat.** — Such products not covered under the provisions of section 37-1604[, Idaho Code,] and which is [are] or contains [contain] any portion of an imported meat product moving in the fresh trade shall bear a label, marker, or other suitable means clearly identifying such product as being or containing imported meat.

**History.**

1965, ch. 78, § 3, p. 127.

**STATUTORY NOTES****Compiler's Notes.**

The first bracketed insertion was added by the compiler to conform to the statutory cita-

tion style. The second and third bracketed insertions were added by the compiler to correct the syntax of the section

**37-1607. Injunctive power to enforce law.** — In addition to other remedies provided by this act the state department of agriculture is authorized to apply to the district court, and such court shall have jurisdiction upon a hearing and for cause shown to grant a temporary or permanent injunction restraining any person from violating this act.

**History.**

1965, ch. 78, § 4, p. 127.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

78, which is compiled as §§ 37-1604 to 37-1610.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**37-1608. Duty of county attorneys.** — It shall be the duty of a county attorney to whom the state department of agriculture reports a violation of

this act to institute appropriate proceedings in the proper courts without delay and to prosecute the same in the manner provided by law.

**History.**

1965, ch. 78, § 5, p. 127.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq. 78, which is compiled as §§ 37-1604 to 37-

1610.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**37-1609. Rules and regulations.** — The state department of agriculture is hereby authorized to adopt such regulations as it may deem necessary to properly enforce the provisions of this act.

**History.**

1965, ch. 78, § 6, p. 127.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq. 78, which is compiled as §§ 37-1604 to 37-

1610.

**Compiler's Notes.**

The words "this act" refer to S.L. 1965, ch.

**37-1610. Penalty.** — Any person who shall fail to comply with the provisions of this act shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine not exceeding one hundred dollars (\$100) or by imprisonment not exceeding thirty (30) days, or both, for the first offense, and double such fine and imprisonment for each subsequent conviction hereunder.

**History.**

1965, ch. 78, § 7, p. 127.

**STATUTORY NOTES****Compiler's Notes.**

78, which is compiled as §§ 37-1604 to 37-

The words "this act" refer to S.L. 1965, ch. 1610.

**CHAPTER 17****BUTCHERS, MEAT DEALERS, AND MEAT PEDDLERS****SECTION.**

37-1701 — 37-1716. [Repealed.]

**37-1701 — 37-1711. Butchers, meat dealers and meat — Registration and regulation. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1933, ch. 69, §§ 1-11, p. 108; am. 1947, ch. 85, § 1, p. 141; am. 1949, ch. 96, § 1, p. 172; am. 1949, ch. 133, § 1, p. 236; am. 1949, ch. 134, §§ 1-3, p. 237; am. 1959, ch. 239, §§ 1, 2, p. 514, were repealed by S.L. 1969, ch. 87, § 34.

**37-1712 — 37-1715. Sale of adulterated sausage prohibited. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1949, ch. 103, §§ 1-4, p. 192; am. 1953, ch. 111, § 1, p. 146, were repealed by S.L. 1957, ch. 213, § 8, p. 450.

**37-1716. Penalty. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

This section, which comprised S.L. 1949, ch. 103, § 5, p. 192; am. 1953, ch. 111, § 1, p. 146, was repealed by S.L. 1969, ch. 87, § 34.

## **CHAPTER 18**

### **POULTRY GRADING AND LABELING**

**SECTION.**

37-1801 — 37-1821. [Repealed.]  
37-1822 — 37-1830. [Reserved.]

**SECTION.**

37-1831 — 37-1839. [Repealed.]

**37-1801 — 37-1807. Meat inspection [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1943, ch. 102, §§ 1 to 7, p. 196; am. 1950 (E. S.), ch. 78, § 1, p. 104; am. 1951, ch. 83, § 1, p. 152; am. 1953, ch. 99, § 1, p. 133, were repealed by S.L. 1957, ch. 213, § 8, p. 450.

**37-1808 — 37-1821. Poultry inspection. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

These sections, which comprised S.L. 1959, ch. 128, §§ 1 to 7, p. 274 and S.L. 1959, ch. 147, §§ 1 to 7, p. 342; am. 1965, ch. 126, § 2, p. 253, were repealed by S.L. 1969, ch. 87, § 34.

**37-1822 — 37-1830.** [Reserved.]

**37-1831 — 37-1839.** Prepackaged and unpackaged poultry grading and regulation. [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised 1971, ch. 66, §§ 1 to 9, p. 151; am. 1974, ch. 18, §§ 183,

184, p. 364, were repealed by S.L. 1977, ch. 135, § 1.

## CHAPTER 19

### MEAT INSPECTION

[INSPECTION REQUIREMENTS — ADULTERATION — MISBRANDING]

SECTION.

37-1901 — 37-1916. [Repealed.]

[MEAT PROCESSORS AND RELATED INDUSTRIES]

37-1917 — 37-1920. [Repealed.]

[FEDERAL-STATE COOPERATION]

SECTION.

37-1921. [Repealed.]

[AUXILIARY PROVISIONS]

37-1922 — 37-1935. [Repealed.]

[INSPECTION REQUIREMENTS — ADULTERATION — MISBRANDING]

**37-1901. Definitions.** [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 1, p. 260; am. 1974, ch. 18, § 185, p. 364;

am. 1978, ch. 99, § 1, p. 184, was repealed by S.L. 2006, ch. 94, § 1.

**37-1902. Inspection requirements — Purpose.** [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1969, ch. 87,

§ 2, p. 260; am. 1974, ch. 18, § 186, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**37-1903. Inspection of animals to be slaughtered.** [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 3, p. 260; am. 1974, ch. 18, § 187, p. 364;

am. 1980, ch. 98, § 1, p. 217, was repealed by S.L. 2006, ch. 94, § 1.

**37-1904. Post-mortem inspection.** [Repealed.]

#### STATUTORY NOTES

**Compiler's Notes.**

This section, which comprised 1969, ch. 87,

§ 4, p. 260; am. 1974, ch. 18, § 188, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**37-1905. Application of inspection provisions. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 5, p. 260; am. 1974, ch. 18, § 189, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1906. Inspection of meat food products — Labeling. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 6, p. 260; am. 1974, ch. 18, § 190, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1907. Label on container. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 7, p. 260; am. 1974, ch. 18, § 191, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1908. Inspection of sanitary conditions. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** am. 1978, ch. 99, § 2, p. 184, was repealed by  
This section, which comprised 1969, ch. 87, S.L. 2006, ch. 94, § 1.  
§ 8, p. 260; am. 1974, ch. 18, § 192, p. 364;

**37-1909. Inspection during nighttime. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 9, p. 260; am. 1974, ch. 18, § 193, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1910. Prohibitions. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 10, p. 260; am. 1980, ch. 98, § 2, p. 217, was  
This section, which comprised 1969, ch. 87, repealed by S.L. 2006, ch. 94, § 1.

**37-1911. Official marks — Authorization by director — Prohibitions. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 11, p. 260; am. 1974, ch. 18, § 194, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1912. Sale or transportation of improperly labeled meat prohibited — Slaughter and preparation in separate establishments. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** § 12, p. 260; am. 1974, ch. 18, § 195, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1913. Inspectors — Appointment — Duties. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** § 13, p. 260; am. 1974, ch. 18, § 196, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1914. Bribery — Penalty. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** § 14, p. 260; am. 1974, ch. 18, § 197, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1915. Exceptions to inspection requirement. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** 18, § 198, p. 364; am. 1975, ch. 85, § 1, p.  
This section, which comprised 1969, ch. 87, § 15, p. 260; am. 1971, ch. 101, § 1, p. 218;  
§ 176; am. 1978, ch. 99, § 3, p. 184, was re-  
am. 1971, ch. 353, § 1, p. 1346; am. 1974, ch. 17, p. 364; am. 1975, ch. 85, § 1, p.  
was repealed by S.L. 2006, ch. 94, § 1.

**37-1916. Storage regulations. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** § 16, p. 260; am. 1974, ch. 18, § 199, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**[MEAT PROCESSORS AND RELATED INDUSTRIES]**

**37-1917. Animals not intended as human food. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.** § 17, p. 260; am. 1974, ch. 18, § 200, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1918. Records required. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 18, p. 260; am. 1974, ch. 99, § 4, p. 184, was repealed by S.L. 2006, ch. 94, § 1.

**37-1919. Registration of businesses. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 19, p. 260; am. 1974, ch. 18, § 202, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**37-1920. Buying, selling or transporting dead animals — Regulations. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 20, p. 260; am. 1974, ch. 18, § 203, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**[FEDERAL-STATE COOPERATION]****37-1921. State agency to cooperate with federal authorities. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 21, p. 260; am. 1974, ch. 18, § 204, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**[AUXILIARY PROVISIONS]****37-1922. Refusal of, withdrawal of inspection services. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 22, p. 260; am. 1974, ch. 18, § 205, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**37-1923. Detention. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

This section, which comprised 1969, ch. 87, § 23, p. 260; am. 1974, ch. 18, § 206, p. 364, was repealed by S.L. 2006, ch. 94, § 1.

**37-1924. Seizure of contraband — Condemnation — Release and disposal — Right to jury trial. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 24, p. 260; am. 1974, ch. 18, § 207, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1925. Jurisdiction. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 25, p. 260, was repealed by S.L. 2006, ch.  
This section, which comprised 1969, ch. 87, 94, § 1.

**37-1926. Forceable interference — Penalty. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 26, p. 260, was repealed by S.L. 2006, ch.  
This section, which comprised 1969, ch. 87, 94, § 1.

**37-1927. Violations of law — Penalties. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** am. 1978, ch. 99, § 5, p. 184, was repealed by  
This section, which comprised 1969, ch. 87, S.L. 2006, ch. 94, § 1.  
§ 27, p. 260; am. 1974, ch. 18, § 208, p. 364;

**37-1928. Additional powers of director — Hearings — Refusal to attend or testify — False statements — Failure to file reports — Unauthorized disclosure of information — Penalties. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 28, p. 260; am. 1974, ch. 18, § 209, p. 364,  
This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1929. Application of law to federally inspected plants. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 29, p. 260, was repealed by S.L. 2006, ch.  
This section, which comprised 1969, ch. 87, 94, § 1.

**37-1930. State brand board — Powers. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 30, p. 260, was repealed by S.L. 2006, ch. 94, § 1.  
 This section, which comprised 1969, ch. 87,

**37-1931. No fee for inspection — Overtime pay — Disposition of fees. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 31, p. 260; am. 1974, ch. 18, § 210, p. 364,  
 This section, which comprised 1969, ch. 87, was repealed by S.L. 2006, ch. 94, § 1.

**37-1932. Title of act. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** § 33, p. 260, was repealed by S.L. 2006, ch. 94, § 1.  
 This section, which comprised 1969, ch. 87,

**37-1933 — 37-1935. Penalties — Suspension or failure of licensee to conform to act — Fees. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** 1965, ch. 219, § 1, p. 503; 1967, ch. 218, § 1,  
 These sections, which comprised S.L. 1957, p. 664, were repealed by S.L. 1969, ch. 87,  
 ch. 213, §§ 6 to 7, p. 450; am. 1959, ch. 58, § 34.  
 § 2, p. 125; am. 1961, ch. 133, § 1, p. 192; am.

**CHAPTER 20****FOOD-PROCESSING ESTABLISHMENTS, CANNING FACTORIES, AND COLD STORAGE PLANTS****SECTION.**

37-2001 — 37-2008. [Repealed.]

**37-2001 — 37-2008. Food processing establishments, canning factories and cold storage plants. [Repealed.]****STATUTORY NOTES**

**Compiler's Notes.** 36-1508; am. 1974, ch. 23, §§ 44, 45, p. 633,  
 These sections, which comprised 1921, ch. were repealed by S.L. 1991, ch. 142, § 1. For  
 223, §§ 1 to 8, p. 510; I.C.A., §§ 36-1501 to present law, see § 39-1601 et seq.

## CHAPTER 21

### DOMESTIC WATER AND ICE

## SECTION.

37-2101. Manufacture and storage of ice.  
37-2102. Domestic water to be protected.

## SECTION.

37-2103. Violation a misdemeanor.

**37-2101. Manufacture and storage of ice.** — Ice manufactured or stored for human consumption shall be made from pure water, and shall be kept stored in clean places free from all filth, offal, refuse, and polluted waters and separate and removed from contact with animal or vegetable matter, and not in proximity to any cesspool, privy vault or sewer, nor in places where such ice may be subject to contamination from, or in the action of, acids, oils, noxious, offensive or injurious gases, smoke or vapors; and all ice manufactured or stored in violation of this section shall be deemed polluted ice and not fit for human consumption; and it shall be unlawful to sell, offer for sale, or store for sale such polluted ice, for human consumption.

## History.

C.S., § 1752; am. 1921, ch. 176, § 1, p. 370;

1913, ch. 173, § 1, p. 549; reen. C.L. 65:85; I.C.A., § 36-1201.

#### STATUTORY NOTES

## Cross References.

Penalty for violation of this section, § 37-2103.

**37-2102. Domestic water to be protected.** — Any person or persons, corporation or corporations, or officers of a municipality, owning or maintaining any plant or public water system as defined in rules of the department, for the supply to the inhabitants of this state, or any part thereof, of water for domestic purposes shall protect the same and keep it free from all impurities and all other foreign substances which tend to injure the health of the ultimate consumers of such water, whether such impurities or foreign substances are chemical or bacterial. It shall be the duty of any of the persons or corporations owning or maintaining such a plant or public water system to provide notices to the radio and television station serving the area served by the public water system or by direct mail to those persons consuming such water of any acute violations from the standards established by the United States environmental protection agency as soon as possible but in no case later than seventy-two (72) hours. An acute health violation is defined as: (i) any violations specified by the state as posing an acute risk to human health; (ii) violation of the maximum contaminant level for nitrate or nitrite as established by federal regulation; (iii) violation of the maximum contaminant level for total coliforms, when fecal coliforms of *E. coli* are present in the water distribution system; or (iv) occurrence of a waterborne disease outbreak as defined by federal regulation. For purposes of this section, maximum contaminant level shall mean the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

**History.**

1913, ch. 173, § 2, first part, p. 550; reen. C.L. 65:86; C.S., § 1753; am. 1921, ch. 176, § 2, p. 370; I.C.A., § 36-1202; am. 1949, ch.

165, § 1, p. 353; am. 1974, ch. 23, § 46, p. 633; am. 1974, ch. 113, § 1, p. 1281; am. 1996, ch. 336, § 1, p. 1136; am. 1998, ch. 119, § 1, p. 447.

**STATUTORY NOTES****Amendments.**

This section was amended twice in 1974 by § 46 of ch. 23, effective July 1, 1974 and by § 1 of ch. 113, effective March 27, 1974. Since § 1 of ch. 113 was the last expression of the legislature, it was set out as the section.

**Effective Dates.**

Section 182 of S.L. 1974, ch. 23 provided that the act should be in full force and effect on and after July 1, 1974.

Section 2 of S.L. 1974, ch. 113, declared an emergency. Approved March 29, 1974.

**37-2103. Violation a misdemeanor.** — Any person, persons, corporation, corporations or officers of a municipality, failing or neglecting to comply with any of the provisions of this chapter shall be guilty of a misdemeanor.

**History.**

1913, ch. 173, § 2, last part, p. 550; reen. C.L. 65:87; C.S., § 1754; am. 1921, ch. 176,

§ 3, p. 370; I.C.A., § 36-1203.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**CHAPTER 22****SALE OF DRUGS AND MEDICAL SUPPLIES****SECTION.**

37-2201 — 37-2215. [Repealed.]

**37-2201 — 37-2215. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

These sections, which comprised 1947, ch. 154, §§ 1 to 9, 11 to 15, p. 398; am. 1957, ch. 112, § 3, p. 190; am. 1957, ch. 326, § 1, p. 689; am. 1963, ch. 172, § 1, p. 496; am. 1965, ch. 258, § 1, p. 657; I.C., § 37-2202A, as added by 1967, ch. 358, § 1, p. 1007; am. 1967, ch. 358,

§§ 2, 3, p. 1007; I.C., § 37-2210, as added by 1967, ch. 358, § 4, p. 1007; 1971, ch. 40, § 1, p. 87; I.C., § 37-2204A, as added by 1975, ch. 92, § 1, p. 188; am. 1976, ch. 138, § 2, p. 512; am. 1976, ch. 140, § 1, p. 515, were repealed by 1979, ch. 131, § 2.

For present law, see § 37-2701 et seq.

**CHAPTER 23****NARCOTIC DRUGS****SECTION.**

37-2301 — 37-2323. [Repealed.]

**37-2301 — 37-2323. Regulation of narcotic drugs. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, comprising S.L. 1937, ch. 131, §§ 1 to 24, p. 202 were repealed by S.L.

1967, ch. 435, § 119. For present law, see § 37-2701 et seq. and § 37-3201 et seq.

## **CHAPTER 24**

### **BARBITURATES**

**SECTION.**

37-2401 — 37-2409. [Repealed.]

**37-2401 — 37-2409. Regulation of use and dispensing of barbiturates. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

These sections, comprising S.L. 1947, ch. 143, §§ 1 to 9, p. 342, were repealed by S.L.

1967, ch. 434, § 23. For present law, see § 39-2701 et seq.

## **CHAPTER 25**

### **OILS**

**SECTION.**

37-2501. Adulterated or misbranded oil — Manufacture and sale unlawful.  
 37-2502. Inspection.  
 37-2503. Right of access for inspection — Penalty for obstructing entry or inspection.  
 37-2504. Oil to be labeled.  
 37-2505. Confiscation of unlawful articles.  
 37-2506. Quality standards.  
 37-2507. Analysis by chemist.  
 37-2508. Chemist as witness.  
 37-2509. Duty of attorney general and prosecuting attorneys.

**SECTION.**  
 37-2510. Penalty of publicity.  
 37-2511. Person defined.  
 37-2512. Adulteration of oils — Misbranded defined.  
 37-2513. Disposition of fines.  
 37-2514. Reclaimed oil defined.  
 37-2515. Sign or label on containers — Containers of one gallon or less.  
 37-2516. Product blended with reclaimed oil.  
 37-2517. Underground storage or fill-pipe — Affixation and visibility of metal tag.  
 37-2518, 37-2519. [Repealed.]  
 37-2520. Penalties for violation of act.

**37-2501. Adulterated or misbranded oil — Manufacture and sale unlawful.** — It shall be unlawful for any person to manufacture, sell, keep for sale, or offer for sale within the state of Idaho any gasoline, benzine, naphtha, lubricating oil or grease, road oil, bituminous road materials, diesel fuel, fuel oil for boilers and internal combustion engines, which is adulterated or misbranded within the meaning of this chapter, and any person who shall manufacture, sell, keep for sale, or offer for sale any of the above-named articles, which is adulterated or misbranded, within the meaning of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars (\$25.00), nor more than \$300.00, and each and every sale in violation hereof shall be deemed a separate offense.

**History.**

1917, ch. 124, § 1, p. 411; reen. C.L. 65:116; C.S., § 1783; I.C.A., § 36-1601; am. 1967, ch.

150, § 1, p. 338.

**STATUTORY NOTES****Cross References.**

Disposition of fines and forfeitures, § 19-4705.

Exceptions, excuses, provisos, and exemptions need not be negated in a complaint, information or indictment to enforce the provisions of this act, § 19-1433.

Obstruction of inspection, § 37-2503.

**37-2502. Inspection.** — It shall be the duty of the department of agriculture to inspect and take samples of the above-named articles that are manufactured, kept for sale, or offered for sale, or sold within the state of Idaho and to cause the same to be tested and to enforce the provisions of this chapter.

**History.**

1917, ch. 124, § 2, p. 411; reen. C.L. 65:117; C.S., § 1784; I.C.A., § 36-1602; am. 1939, ch.

96, § 1, p. 162; am. 1974, ch. 18, § 211, p. 364.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101.

**37-2503. Right of access for inspection — Penalty for obstructing entry or inspection.** — For obtaining information regarding the suspected violation of this chapter, the department of agriculture shall have access to all places where the above-named articles are sold, offered for sale or kept for sale, manufactured or transported, or stored, and may take samples therefrom for analysis, tendering payment therefor. Any person obstructing such entry or inspection, or failing upon request to assist therein shall be guilty of a misdemeanor and shall be punished as provided in section 37-2501, Idaho Code.

**History.**

1917, ch. 124, § 4, p. 412; reen. C.L. 65:118; C.S., § 1785; I.C.A., § 36-1603; am. 1939, ch. 96, § 2, p. 162; am. 1974, ch. 18, § 212, p. 364.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101.

**37-2504. Oil to be labeled.** — Gasoline, benzine, naphtha, lubricating oil and grease, road oil, bituminous road materials, diesel fuel and fuel oil must be sold under their true name and grades, respectively, and such names and grades must be impressed or otherwise plainly marked upon the barrel, can, vessel, or other container in which the same is stored, sold, offered or exposed for sale, respectively, or upon a label conspicuously and securely fastened thereto, giving the true name and grade of the product, name and address of manufacturer or dealer, who sells the same.

**History.**

1917, ch. 124, § 3, p. 411; reen. C.L. 65:119; C.S., § 1786; I.C.A., § 36-1604; am. 1967, ch.

**37-2505. Confiscation of unlawful articles.** — Possession by any person of any of the articles above-named in this chapter shall be considered prima facie evidence that the same is kept by such person for sale and, if in violation of this chapter, the department of agriculture shall be authorized to seize upon and take possession of such article and upon the order of any court of competent jurisdiction its official shall destroy the same: provided, that in case the legal disability which exists against such article is one which can be removed by proper labeling, the official shall relabel and sell the same and pay the proceeds into the state treasury.

**History.**

1917, ch. 124, § 5, p. 412; reen. C.L. 65:120; C.S., § 1787; I.C.A., § 36-1605; am. 1974, ch.

**37-2506. Quality standards.** — The standards of quality for motor gasoline, benzine, naphtha, grease, road oil, bituminous road products, fuel oil for heating purposes and diesel fuel shall be the latest specifications adopted by the American Society for Testing and Materials or other specifications adopted as standard by an Idaho governmental agency for its use, for those products. Motor oils shall conform to the latest viscosity classifications of the Society of Automotive Engineers. Motor oils falling outside those viscosity classifications shall not carry the SAE designation.

**History.**

I.C., § 37-2506, as added by 1967, ch. 150,  
§ 4, p. 338.

**STATUTORY NOTES****Prior Laws.**

Former § 37-2506, which comprised S.L. 1917, ch. 124, § 6, p. 412; reen. C.L. 65:121; C.S., § 1788; I.C.A., § 36-1606, was repealed by S.L. 1967, ch. 150, § 3.

**Compiler's Notes.**

For American Society for Testing Materials, see <http://www.astm.org>.

For Society of Automotive Engineers, see <http://www.sae.org>.

**37-2507. Analysis by chemist.** — The department of agriculture is directed to make, or accomplish by contract with qualified laboratories, all analyses and tests of articles inspected in this chapter and to employ, in such analyses and tests, the standard methods of analysis which have been or shall be adopted by the American Society for Testing and Materials or other standard methods of analysis adopted as standard by an Idaho governmental agency when analyzing or testing products for such agency's use.

**History.**

1917, ch. 124, § 7, p. 412; reen. C.L. 65:122; C.S., § 1789; I.C.A., § 36-1607; am. 1939, ch. 96, § 3, p. 162; am. 1967, ch. 150, § 5, p. 338; am. 1974, ch. 18, § 214, p. 364.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, see § 22-101 et seq.

**Compiler's Notes.**

For American Society for Testing Materials, see <http://www.astm.org>.

**37-2508. Chemist as witness.** — In all prosecutions arising under this chapter the certificate of any chemist from a qualified testing laboratory as approved by the department of agriculture, when duly sworn to by such officer shall be prima facie evidence of the fact or facts therein certified, or in case it is necessary for such chemist to appear as a witness in court, the judge of the district court wherein such trial shall be held, shall issue a subpoena for his attendance at the trial and it shall be the duty of such chemist to obey such subpoena, and all his actual and necessary expenses shall be paid by the county wherein such trial is held in the same manner that county officers are paid and, in case of conviction, shall be charged to the defendant as part of the costs of prosecution.

**History.**

1917, ch. 124, § 8, p. 413; reen. C.L. 65:123; C.S., § 1790; I.C.A., § 36-1608; am. 1974, ch.

18, § 215, p. 364; am. 1990, ch. 379, § 1, p. 1053.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, see § 22-101 et seq.

**37-2509. Duty of attorney general and prosecuting attorneys.** — It shall be the duty of the attorney general of the state of Idaho or the prosecuting attorney in any county of the state, when called upon by the department of agriculture, to render all legal assistance in his power to execute the provisions of this chapter and to prosecute cases arising under this chapter.

**History.**

1917, ch. 124, § 9, p. 413; reen. C.L. 65:124; C.S., § 1791; I.C.A., § 36-1609; am. 1939, ch.

96, § 4, p. 162; am. 1974, ch. 18, § 216, p. 364.

## STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.

Department of agriculture, see § 22-101 et seq.

Exceptions, excuses, provisos, and exemptions need not be negated in a complaint, information or indictment to enforce the provisions of this chapter, § 19-1433.

**37-2510. Penalty of publicity.** — When any person has been convicted of manufacturing, selling, keeping for sale or offering for sale within the state of Idaho any gasoline, benzine, naphtha, lubricating oil or grease, road oil, bituminous road materials, diesel fuel and fuel oil for boilers and internal combustion engines, which is adulterated or misbranded, it shall be the duty of the department of agriculture to publish the fact in at least one (1) newspaper published in the county in which such adulterated or

misbranded article or articles is found, giving the name of the article, the name of the manufacturer, the name of the dealer or person selling or offering the same for sale and such other information as will be beneficial to the consumers.

**History.** 1917, ch. 124, § 10, p. 413; reen. C.L. 65:125; C.S., § 1792; I.C.A., § 36-1610; am. 1939, ch. 96, § 5, p. 162; am. 1967, ch. 150, § 6, p. 338; am. 1974, ch. 18, § 217, p. 364; am. 1990, ch. 379, § 2, p. 1053.

#### STATUTORY NOTES

**Cross References.** Department of agriculture, § 22-101 et seq. the act should be in full force and effect on and after July 1, 1974.

**Effective Dates.** Section 263 of S.L. 1974, ch. 18, provided

**37-2511. Person defined.** — The word "person," as used in this chapter shall be construed to import both the plural and the singular, as the case demands, and shall include corporations, companies, societies and associations. When construing and enforcing the provisions of this chapter, the act, omission, or failure of any officer, agent, or other person acting for or employed by any corporation, company, society, or association, within the scope of his employment or office shall in every case be also deemed to be the act, omission, or failure of such corporation, company, society or association as well as that of the person.

**History.** 1917, ch. 124, § 11, p. 413; reen. C.L. 65:126; C.S., § 1793; I.C.A., § 36-1611.

**37-2512. Adulteration of oils — Misbranded defined.** — For the purposes of this chapter an article shall be deemed to be adulterated:

1. If any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality, purity or strength.
2. If any substance has been substituted, wholly or in part, for the article.
3. If the article fails to conform to any of the requirements of the standards of quality, purity and strength adopted by the American Society for Testing and Materials or other specifications adopted as standard by an Idaho governmental agency for its use.

The term "misbranded," as used herein, shall apply to all articles, the package or label of which shall bear any statement, design or device regarding such article, or the ingredients or substances contained therein, or the properties of such article which are false or misleading in any particular whatsoever.

**History.** 1917, ch. 124, § 12, p. 413; reen. C.L. 65:127; C.S., § 1794; I.C.A., § 36-1612; am. 1967, ch. 150, § 7, p. 338.

**STATUTORY NOTES****Compiler's Notes.**

For American Society for Testing Materials,  
see <http://www.astm.org>.

**37-2513. Disposition of fines.** — All fines, exclusive of costs, collected by any of the courts of this state, as penalties, for the violation of this chapter or any of its provisions, shall be paid by the proper officers of said court to the state treasurer of the state of Idaho.

**History.**

1917, ch. 124, § 14, p. 414; reen. C.L.  
65:128; C.S., § 1795; I.C.A., § 36-1613.

**37-2514. Reclaimed oil defined.** — Reclaimed oil as used in this act is defined as any lubricating oil or motor oil which has been previously used for the lubrication of internal combustion engines or any gearing or shafting attached to or connected thereto, or for any other lubricating purpose and includes any lubricating or motor oil which after such use has been re-run, filtered, redistilled, settled or reprocessed in any manner.

**History.**

1951, ch. 237, § 1, p. 490.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1951, ch. 237, which is compiled as §§ 37-2514 to 37-

2517 and 37-2520.

**37-2515. Sign or label on containers — Containers of one gallon or less.** — Except as provided in this act containers of reclaimed oil which [are] sold or offered for sale or delivery shall bear a superimposed sign or label of rectangular shape not less than four (4) by six (6) inches containing the words "reclaimed motor oil" or "lubricating oil, reclaimed" in red letters of gothic type over a white background with a stroke of not less than one-eighth inch (1/8'') in width and not less than three-fourths inch (3/4'') in height.

On all containers of reclaimed oil which is [are] sold or offered for sale of one (1) gallon or less, a superimposed sign or label of rectangular shape of not less than two (2) by three (3) inches containing the words "reclaimed motor oil" or "lubricating oil, reclaimed," in red letters of gothic type over a white background with a stroke of not less than one-sixteenth inch (1/16'') in width and not less than one-half inch (1/2'') in height shall be sufficient.

Lubricants blended with re-refined/recycled oil shall be labeled as such. The size type on containers of one (1) gallon or less shall be at least one-eighth inch (1/8'') high and on containers larger than one (1) gallon at least one-fourth inch (1/4'') high.

**History.**

1951, ch. 237, § 2, p. 490; am. 1994, ch. 425,  
§ 1, p. 1333.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1951, ch. 237, which is compiled as §§ 37-2514 to 37-2517 and 37-2520.

The bracketed insertions in the first and second paragraphs were added by the compiler to correct the syntax of those sentences.

**37-2516. Product blended with reclaimed oil.** — If any reclaimed oil is used in blending or compounding in any other petroleum product sold or offered for sale or delivery the fact of such blending or compounding shall be indicated on all containers in the manner required by this act for containers of reclaimed oil.

Lubricants blended with re-refined/recycled oil shall be labeled as such. The size type on containers of one (1) gallon or less shall be at least one-eighth (1/8) inch high and on containers larger than one (1) gallon at least one-fourth (1/4) inch high.

**History.**

1951, ch. 237, § 3, p. 490; am. 1994, ch. 425, § 2, p. 1333.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act" refer to S.L. 1951, ch. 237, which is compiled as §§ 37-2514 to 37-2517 and 37-2520.

emergency and provided this act shall be in full and force on and after April 1, 1994.  
Approved April 7, 1994.

**Effective Dates.**

Section 3 of S.L. 1994, ch. 425, declared an

**37-2517. Underground storage or fill-pipe — Affixation and visibility of metal tag.** — If the container of reclaimed oil sold or offered for sale or delivery is an underground storage tank the sign or label required by this article to be attached shall be affixed to the inlet end of the fill-pipe of the underground tank and shall consist of a metal tag firmly attached or affixed and plainly visible while the tank is being filled. The letters on such sign or label may be any convenient size.

**History.**

1951, ch. 237, § 4, p. 490.

**37-2518, 37-2519. Display of baskets containing bottles of oil — Sufficiency of labels — Intermingling of bottles. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

The following sections were repealed by S.L. 1999, ch. 57, § 1, effective July 1, 1999.

37-2519: I.C., § 37-2519, as added by 1951, ch. 237, § 6, p. 490.

37-2518: I.C., § 37-2518, as added by 1951, ch. 237, § 5, p. 490.

**37-2520. Penalties for violation of act.** — Any person who shall sell

or offer for sale or delivery any reclaimed oil the container of which is not labeled or marked as provided in this act shall be guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not less than twenty-five dollars, nor more than \$300.00, and each and every sale in violation hereof shall be deemed a separate offense.

**History.**

1951, ch. 237, § 7, p. 490.

**STATUTORY NOTES****Cross References.**

Exceptions, excuses, provisos, and exemptions need not be negated in a complaint, information or indictment to enforce the provisions of this chapter, § 19-1433.

**Compiler's Notes.**

The words "this act" refer to S.L. 1951, ch. 237, which is compiled as §§ 37-2514 to 37-2517 and 37-2520.

## **CHAPTER 26**

### **ENRICHMENT OF BREAD AND FLOUR**

**SECTION.**

- 37-2601. Definitions.
- 37-2602. Enrichment of flour.
- 37-2603. Enrichment of bread and rolls.
- 37-2604. Enforcement of provisions — Rules and regulations.
- 37-2605. Revision of standards to conform to interstate shipments.

**SECTION.**

- 37-2606. Suspension of enrichment during shortage.
- 37-2607. Publication of orders, rules and regulations.
- 37-2608. Method of publication.
- 37-2609. Inspection and investigation.
- 37-2610. Penalty for violation.

**37-2601. Definitions.** — When used in this act, unless the context otherwise requires:

(1) Flour includes and shall be limited to the foods commonly known in the milling and baking industries as (a) white flour, also known as wheat flour or plain flour; (b) bromated flour; (c) self-rising flour, also known as self-rising white flour; and (d) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour and also excludes special flour not used for bread, roll, bun, or biscuit baking, such as specialty cake, pancake and pastry flour.

(2) White bread means any bread made with flour, as defined in subdivision (1)(a) of this section, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread, and Italian bread.

(3) Rolls include plain white rolls and buns of the semi-bread dough type, namely: soft rolls, such as hamburger rolls, hot dog rolls, Parker House rolls, and hard rolls, such as Vienna rolls and Kaiser rolls, but shall not include yeast-raised sweet rolls or sweet buns made with fillings or coatings, such as cinnamon rolls or buns, and butterfly rolls.

(4) Director means the director of the department of agriculture.

(5) Person means an individual, a corporation, a partnership, an association, a joint stock company, a trust, or any group of persons whether incorporated or not, engaged in the commercial manufacture or sale of flour, white bread, or rolls.

**History.**

1961, ch. 109, § 1, p. 164; am. 1974, ch. 18,  
§ 218, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-  
101.

109, which is compiled as §§ 37-2601 to 37-  
2610.

**Compiler's Notes.**

The words "this act" refer to S.L. 1961, ch.

**37-2602. Enrichment of flour.** — It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state flour, as defined in section 37-2601[, Idaho Code], unless the following vitamins and minerals are contained in each pound of such flour: not less than 2.0 mg. and not more than 2.5 mg. of thiamine; not less than 1.2 mg. and not more than 1.5 mg. of riboflavin; not less than 16.0 mg. and not more than 20.0 mg. of niacin or niacin-amide; and not less than 13.0 mg. and not more than 16.5 mg. of assimilable iron, expressed as Fe.; except in the case of self-rising flour which in addition to the above ingredients shall contain not less than 500 mg. and not more than 1500 mg. of assimilable calcium, expressed as Ca.; provided, that the provisions of this section shall not apply to flour sold to distributors, bakers, or other processors if the purchaser furnishes to the seller a certificate, in such form as the director shall prescribe by regulation, that such flour will be (1) resold to a distributor, baker, or other processor, (2) used in the manufacture, mixing, or compounding of flour, white bread, or rolls enriched to meet the requirements of sections 37-2601 — 37-2610[, Idaho Code], or (3) used in the manufacture of products other than flour, white bread, or rolls. It shall be unlawful for any such purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

**History.**

1961, ch. 109, § 2, p. 164.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-  
101.

ning and near the end of this section were added by the compiler to conform to the statutory citation style.

**Compiler's Notes.**

The bracketed insertions near the begin-

**37-2603. Enrichment of bread and rolls.** — It shall be unlawful for any person to manufacture, bake, sell or offer for sale, for human consumption in this state, any white bread or rolls, as defined in section 37-2601[, Idaho Code], unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than 1.1 mg. and not more than 1.8 mg. of thiamine; not less than 0.7 mg. and not more than 1.6 mg. of

riboflavin; not less than 10.0 mg. and not more than 15.0 mg. of niacin; and not less than 8.0 mg. and not more than 12.5 mg. of iron (Fe.).

#### **History.**

1961, ch. 109, § 3, p. 164.

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

The abbreviation enclosed in parentheses so appeared in the law as enacted.

**37-2604. Enforcement of provisions — Rules and regulations.** — The director is hereby charged with the duty of enforcing the provisions of sections 37-2601 — 37-2610, Idaho Code, and he is hereby authorized and directed to make, amend, or rescind rules, regulations, and orders for the efficient enforcement of sections 37-2601 — 37-2610, Idaho Code.

#### **History.**

1961, ch. 109, § 4, p. 164; am. 1974, ch. 18, § 219, p. 364.

#### **STATUTORY NOTES**

##### **Cross References.**

Director of department of agriculture, § 22-101.

**37-2605. Revision of standards to conform to interstate shipments.** — Whenever the vitamin and mineral requirements set forth in sections 37-2602 and 37-2603, Idaho Code, are no longer in conformity with the legally established standards governing the interstate shipment of enriched flour, enriched white bread, or enriched rolls, the director, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of sections 37-2602 — 37-2610, Idaho Code, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments.

#### **History.**

1961, ch. 109, § 5, p. 164; am. 1974, ch. 18, § 220, p. 364.

#### **STATUTORY NOTES**

##### **Cross References.**

Director of department of agriculture, § 22-101.

**37-2606. Suspension of enrichment during shortage.** — If the director finds that there is an existing or imminent shortage of any ingredient required by section 37-2602 or 37-2603, Idaho Code, and that because of such shortage the sale and distribution of flour, white bread, or

rolls may be impeded by the enforcement of sections 37-2601 — 37-2610, Idaho Code, he shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour, white bread, or rolls and, if he finds it necessary, or appropriate, excepting such foods from labeling requirement until the further order of the director. Any such findings may be made without hearing, on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the director on his own motion may, and upon receiving the sworn statements of ten (10) or more persons subject to sections 37-2601 — 37-2610, Idaho Code, that they believe such a shortage exists or is imminent shall, (1) within twenty (20) days thereafter hold a public hearing with respect thereto at which any interested person may present evidence and (2) make findings based upon evidence presented. The director shall publish a notice in a newspaper, having a general circulation in the state, of any such hearing at least ten (10) days prior thereto. Whenever the director has reason to believe that such shortage no longer exists, he shall hold a public hearing, after at least ten (10) days notice shall have been published in a newspaper having a general circulation in the state, at which any interested person may present evidence, and he shall make findings based upon the evidence presented. If his findings be that such shortage no longer exists, he shall issue an order to become effective not less than thirty (30) days after publication thereof, revoking such previous order; provided that undisposed floor stocks of flour on hand at the effective date of such revocation order or flour manufactured prior to such effective date for sale in this state may thereafter be lawfully sold or disposed of.

**History.**

1961, ch. 109, § 6, p. 164; am. 1974, ch. 18, § 221, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**37-2607. Publication of orders, rules and regulations.** — All orders, rules, and regulations adopted by the director as provided by sections 37-2601 — 37-2610, Idaho Code, shall be published in the manner herein-after prescribed and, within the limits of specified sections 37-2601 — 37-2610, Idaho Code, shall become effective upon such date as the director shall fix.

**History.**

1961, ch. 109, § 7, p. 164; am. 1974, ch. 18, § 222, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

**37-2608. Method of publication.** — Whenever under sections 37-2601 — 37-2610[, Idaho Code,] publication of any notice, order, rule, or regulation is required, such publication shall be made at least once each week in at least one (1) daily newspaper of general circulation printed and published in this state.

**History.**

1961, ch. 109, § 8, p. 164.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion was added by the compiler to conform to the statutory citation style.

**37-2609. Inspection and investigation.** — For the purpose of sections 37-2601 — 37-2610, Idaho Code, the director, or such officers or employees under his supervision as he may designate, is authorized (1) to take samples for analysis, (2) to conduct examinations and investigations, (3) to enter at reasonable times, any factory, mill, bakery, warehouse, shop, or establishment where flour, white bread, or rolls are manufactured, processed, packed, sold, or held, or any vehicle being used for the transportation thereof, and (4) to inspect any such place or vehicle and any flour, white bread, or rolls therein, and all pertinent equipment, materials, containers, and labeling.

**History.**

1961, ch. 109, § 9, p. 164; am. 1974, ch. 18, § 223, p. 364.

**37-2610. Penalty for violation.** — Any person who violates any of the provisions of sections 37-2601 — 37-2610, Idaho Code, or the orders, rules, or regulations promulgated by the director under the authority thereof shall, upon conviction thereof, be fined for each and every offense, in a sum not exceeding one hundred dollars (\$100), or imprisoned in the county jail for not more than thirty (30) days.

**History.**

1961, ch. 109, § 10, p. 164; am. 1974, ch. 18, § 224, p. 364.

**STATUTORY NOTES****Cross References.**

Director of department of agriculture, § 22-101.

act should be in full force and effect on and after July 1, 1974.

**Effective Dates.**

Section 263 of S.L. 1974, ch. 18 provided the

## CHAPTER 27

### UNIFORM CONTROLLED SUBSTANCES

#### Article I

**SECTION.**

37-2701. Definitions.

#### Article II

37-2702. Authority to control.

37-2703. Nomenclature.

37-2704. Schedule I tests.

37-2705. Schedule I.

37-2706. Schedule II tests.

37-2707. Schedule II.

37-2708. Schedule III tests.

37-2709. Schedule III.

37-2710. Schedule IV tests.

37-2711. Schedule IV.

37-2712. Schedule V tests.

37-2713. Schedule V.

37-2713A. Schedule VI.

37-2714. Republishing of schedules.

#### Article III

37-2715. Rules.

37-2716. Registration requirements.

37-2717. Registration.

37-2718. Revocation and suspension of registration.

37-2719. Order to show cause.

37-2720. Records of registrants.

37-2721. Order forms.

37-2722. Prescriptions.

37-2723. Form and contents of prescription.

37-2724. Use in hospital — Form of order — Record — Nursing home, extended care facility.

37-2725. Prescription required — Prescription blanks — Possession — Transference — Contents.

37-2726. Filing prescriptions — Database.

37-2727. Controlled substances in narcotic treatment programs.

37-2728 — 37-2730. [Repealed.]

37-2730A. Prescription tracking program.

37-2731. Information required on label.

#### Article IV

37-2732. Prohibited acts A — Penalties.

37-2732A. Sacramental use of peyote permitted.

#### SECTION.

37-2732B. Trafficking — Mandatory sentences.

37-2732C. Using or being under the influence — Penalties.

37-2733. Prohibited acts B — Penalties.

37-2734. Prohibited acts C — Penalties.

37-2734A. Prohibited acts D — Penalties.

37-2734B. Prohibited acts E — Penalties.

37-2734C. Prohibited Acts F — Penalties.

37-2735. Penalties under other laws.

37-2735A. Drug hotline fee.

37-2736. Bar to prosecution.

37-2737. Distribution to persons under age 18.

37-2737A. Manufacture or delivery of controlled substance where children are present.

37-2738. Sentencing criteria in drug cases.

37-2739. Second or subsequent offenses.

37-2739A. Mandatory minimum penalty.

37-2739B. Fixed minimum sentences in drug cases.

#### Article V

37-2740. Powers of enforcement personnel.

37-2741. Administrative inspections and warrants.

37-2741A. Utility records — Inspection and copying — Wrongful disclosure.

37-2742. Injunctions.

37-2743. Cooperative arrangements.

37-2744. Forfeitures.

37-2744A. Real property subject to forfeiture.

37-2744B. Authorization to receive and administer federal forfeitures and private donations.

37-2745. Burden of proof — Liabilities.

37-2746. Judicial review.

37-2747. Education and research.

#### Article VI

37-2748. Pending proceedings.

37-2749. Continuation of rules.

37-2750. Uniformity of interpretation.

37-2751. Short title.

#### Article I

**37-2701. Definitions.** — As used in this act:

(a) “Administer” means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) A practitioner (or, in his presence, by his authorized agent); or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseman, or employee of the carrier or warehouseman.

(c) "Board" means the state board of pharmacy created in chapter 17, title 54, Idaho Code, or its successor agency.

(d) "Bureau" means the Bureau of Narcotic and Dangerous Drugs, United States Department of Justice, or its successor agency.

(e) "Controlled substance" means a drug, substance, or immediate precursor in schedules I through V of article II of this act.

(f) "Counterfeit substance" means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person who in fact manufactured, distributed, or dispensed the substance.

(g) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.

(h) "Director" means the director of the Idaho state police.

(i) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(j) "Dispenser" means a practitioner who dispenses.

(k) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(l) "Distributor" means a person who distributes.

(m) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances (other than food) intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(n) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this act. It includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:
  - (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
  - (ii) Water pipes;
  - (iii) Carburetion tubes and devices;
  - (iv) Smoking and carburetion masks;
  - (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
  - (vi) Miniature cocaine spoons, and cocaine vials;
  - (vii) Chamber pipes;
  - (viii) Carburetor pipes;
  - (ix) Electric pipes;
  - (x) Air-driven pipes;
  - (xi) Chillums;
  - (xii) Bongs;
  - (xiii) Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;

2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of this act;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this act; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this act shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;
14. Expert testimony concerning its use.

(o) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or under the jurisdiction of an agency of the United States.

(p) "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit manufacture.

(q) "Isomer" means the optical isomer, except as used in section 37-2705(d), Idaho Code.

(r) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full-time or part-time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(s) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repack-

aging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

- (1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
- (2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(t) "Marijuana" means all parts of the plant of the genus Cannabis, regardless of species, and whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. Evidence that any plant material or the resin or any derivative thereof, regardless of form, contains any of the chemical substances classified as tetrahydrocannabinols shall create a presumption that such material is "marijuana" as defined and prohibited herein.

(u) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(v) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 37-2702, Idaho Code, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

(w) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(x) "Peace officer" means any duly appointed officer or agent of a law enforcement agency, as defined herein, including, but not limited to, a duly

appointed investigator or agent of the Idaho state police, an officer or employee of the board of pharmacy, who is authorized by the board to enforce this act, an officer of the Idaho state police, a sheriff or deputy sheriff of a county, or a marshal or policeman of any city.

(y) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(z) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(aa) "Practitioner" means:

(1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of his professional practice or research in this state;

(2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of their professional practice or research in this state.

(bb) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.

(cc) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(2) Statements made to the recipient that the substance may be resold for inordinate profit; or

(3) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(dd) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(ee) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(ff) "Utility" means any person, association, partnership or corporation providing telephone and/or communication services, electricity, natural gas or water to the public.

**History.**

I.C., § 37-2701, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 1, p. 261; am. 1974, ch. 27, § 78, p. 811; am. 1975, ch. 196, § 1, p. 545; am. 1980, ch. 388, § 1, p. 977; am.

1982, ch. 169, § 1, p. 442; am. 1983, ch. 218, § 1, p. 599; am. 1989, ch. 266, § 1, p. 646; am. 1995, ch. 116, § 23, p. 386; am. 1999, ch. 280, § 1, p. 696; am. 2000, ch. 469, § 84, p. 1450; am. 2010, ch. 118, § 2, p. 256.

## STATUTORY NOTES

**Cross References.**

Idaho state police, § 67-2901 et seq.

**Prior Laws.**

Former title 37, chapter 27, comprising S.L. 1967, ch. 435, §§ 1-23, p. 1436, was repealed by S.L. 1971, ch. 215, § 3.

**Amendments.**

The 2010 amendment, by ch. 118, added subsection (q) and redesignated the subsequent subsections accordingly.

**Compiler's Notes.**

The words "this act", in the introductory paragraph and in subsection (e), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The words "this act", in subsection (n), refer to S.L. 1980, ch. 388, which is codified as §§ 37-2701, 37-2734A, 37-2734B, and 37-2744. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The Bureau of Narcotics and Dangerous Drugs, referred to in subsection (d), was abolished in 1973 and its powers and duties were subsumed by the drug enforcement agency. See <http://www.usdoj.gov/dea>.

Although "controlled substance" is defined in subsection (e) as a drug or substance listed in schedules I through V in article II, an additional class of controlled substances was added as schedule VI in 1989. See § 37-2713A.

The United States Pharmacopoeia, referred to in subsection (m), is a non-governmental official public standards-setting authority for prescription and over-the-counter medicines. See <http://www.usp.org>.

The Homeopathic Pharmacopoeia of the United States, referred to in subsection (m), is the official compendium for homeopathic drug in the United States. See <http://hpus.com>.

The National Formulary, referred to in subsection (m), contains standards for medicines, dosage forms, drug substances, excipients, medical devices, and dietary supplements. See <http://www.usp.org/USPNF>.

The words in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 1975, ch. 196 declared an emergency. Approved March 28, 1975.

Section 30 of S.L. 1995, ch. 116 declared an emergency. Approved March 14, 1995.

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

## JUDICIAL DECISIONS

## ANALYSIS

Constitutionality.  
Delivery.  
Double jeopardy.  
Drug paraphernalia.  
Evidence.  
Manufacture.  
Marijuana.  
Prosecution.  
Question of law.  
Separate offenses.  
Testing of drugs.

**Constitutionality.**

The legislature's classification of cocaine as a narcotic for regulatory and penalty purposes is not in conflict with constitutional principles of due process, equal protection, and cruel and unusual punishment. State v. Cianelli, 101 Idaho 313, 612 P.2d 550 (1980).

The classification of cocaine as a narcotic drug is constitutional. State v. McNeely, 104 Idaho 849, 664 P.2d 277 (Ct. App. 1983).

**Delivery.**

An examination of the word "delivery", as defined pursuant to this section, makes it

clear that a defendant need not have been an agent of another to be guilty under § 37-2732. State v. Sharp, 104 Idaho 691, 662 P.2d 1135 (1983).

A violation of § 37-2732(a)(1)(B) occurs when a controlled substance is intentionally and unlawfully delivered; it is immaterial that the recipient is an unexpected person. State v. Castillo, 108 Idaho 205, 697 P.2d 1219 (Ct. App. 1985).

Jury instruction was proper where court advised the jury that they could convict defendant of delivery of cocaine if they found he had "attempted to deliver" cocaine, as the

instruction followed the statutory language whereby "deliver" or "delivery" are defined as the actual, constructive or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship. *State v. Bruno*, 119 Idaho 199, 804 P.2d 928 (Ct. App. 1990).

Defendant claimed that the trial court erred in instructing the jury, and that the jury should have been given the definition of "deliver", asserting that an indirect transfer did not equate to a constructive transfer and that the district court's instruction lessened the state's burden of proof; however, the jury was instructed from the pattern Idaho criminal jury instructions, which were presumptively correct. *State v. Cuevas-Hernandez*, 140 Idaho 373, 93 P.3d 704 (Ct. App. 2004).

#### **Double Jeopardy.**

The facts establishing the statutory elements of manufacturing a controlled substance are different from the facts required to prove the elements of possessing a controlled substance with intent to deliver, and separate convictions for these offenses did not violate state and federal constitutional protection against double jeopardy. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

#### **Drug Paraphernalia.**

Under the definition of drug paraphernalia in this section and the provisions of § 37-2734B, what the state must prove beyond a reasonable doubt is that the defendant used an item with an illegal drug (use), or marketed an item with the intent that it be used with illegal drugs (intended for use), or designed an item with the intent that it be used with illegal drugs (designed for use). *State v. Newman*, 108 Idaho 5, 696 P.2d 856 (1985).

The intent terminology in the definition of drug paraphernalia refers to that of the person who has control of the illegal paraphernalia. *State v. Newman*, 108 Idaho 5, 696 P.2d 856 (1985).

#### **Evidence.**

Where no evidence was produced at trial of fingerprints, footprints, or any other physical evidence which would have connected either defendant to the cultivation activity in the greenhouse, a conviction of either defendant for manufacturing marijuana could not be sustained. *State v. Randles*, 117 Idaho 344, 787 P.2d 1152 (1990).

Substance identification is an issue to be decided by the jury, and, where a drug analyst testified at length to the laboratory tests she conducted on the plant material found in defendant's home and at the end of the testimony concluded that in her opinion each of the evidence envelopes contained marijuana, there was sufficient evidence to sustain the jury's verdict. *State v. Griffith*, 130 Idaho 64, 936 P.2d 707 (Ct. App. 1997).

#### **Manufacture.**

Growing marijuana plants in a greenhouse was not sufficient to sustain a conviction of manufacture of marijuana against the defendant. *State v. Randles*, 117 Idaho 344, 787 P.2d 1152 (1990).

#### **Marijuana.**

The definition of marijuana was intended to include those parts of marijuana which contain THC and exclude those parts which do not and was not limited to any particular species of marijuana. *State v. Miles*, 97 Idaho 396, 545 P.2d 484 (1976), overruled on other grounds, *State v. Bottelson*, 102 Idaho 90, 625 P.2d 1093 (1981).

The trial court erred in holding that the growing of marijuana was within the personal use exception of the manufacturing statutes, §§ 37-2732, 37-2737A, and this section. *State v. Griffith*, 127 Idaho 8, 896 P.2d 334 (1995).

The definition of marijuana in this section is unambiguous and will be interpreted by the court in accordance to its language. *State v. Griffith*, 130 Idaho 64, 936 P.2d 707 (Ct. App. 1997).

Under the definition of marijuana in this section, the state is not required to offer evidence that the material disputed at trial contains THC in order to prove such material is marijuana; but, as the section indicates, if the state does introduce evidence that the material contains THC, it creates a presumption in favor of the state that the material is marijuana. *State v. Griffith*, 130 Idaho 64, 936 P.2d 707 (Ct. App. 1997).

Where officers discovered approximately one pound of marijuana in the garage at defendant's home and approximately \$151,000 in currency at defendant's automotive repair shop, the evidence was sufficient to support his felony conviction for possession of marijuana. *State v. Patterson*, 139 Idaho 858, 87 P.3d 967 (Ct. App. 2003).

#### **Prosecution.**

In prosecution for delivery of a controlled substance, state is not required to make information available to the defense in the absence of a specific request and motions and orders of discovery containing standard requests for names and addresses of all potential witnesses having knowledge of relevant facts does not constitute a specific request. *State v. Totten*, 99 Idaho 117, 577 P.2d 1165 (1978).

#### **Question of Law.**

The question whether a substance is designated in the uniform controlled substances act as a controlled substance is a question of law for the court, and not the jury, to decide. *State v. Hobbs*, 101 Idaho 262, 611 P.2d 1047 (1980).

#### **Separate Offenses.**

Where the informations separately charging defendant with the two crimes of manu-

factoring and possession with intent to deliver a controlled substance contained no specific factual allegations showing what acts were alleged to be the basis for each respective crime, and since there were no specific references to separate acts committed at different times in order to satisfy the "temporal" test under § 18-301, the district court erred in refusing to dismiss one of the counts against defendant. State v. Ledbetter, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

#### Testing of Drugs.

The fact that a state expert witness began her testing analysis with the assumption that the substance in question, prednisolone, was a drug did not detract from the relevance of the tests performed or the conclusions drawn since, even assuming that a nondrug substance might theoretically give the same test results as prednisolone, the possibility of such

an occurrence did not bar the jury from deciding that the evidence presented was convincing enough to persuade them, beyond a reasonable doubt, that the substance was prednisolone. State v. Kellogg, 102 Idaho 628, 636 P.2d 750 (1981).

**Cited in:** State v. Kincaid, 98 Idaho 440, 566 P.2d 763 (1977); State v. Mata, 107 Idaho 863, 693 P.2d 1065 (Ct. App. 1984); State v. Pardo, 109 Idaho 1036, 712 P.2d 737 (Ct. App. 1985); State v. Montague, 114 Idaho 319, 756 P.2d 1083 (Ct. App. 1988); State v. Walker, 121 Idaho 18, 822 P.2d 537 (Ct. App. 1991); State Dep't of Law Enforcement ex rel. Cade v. One 1990 Geo Metro, 126 Idaho 675, 889 P.2d 109 (Ct. App. 1995); State v. Ambro, 142 Idaho 77, 123 P.3d 710 (Ct. App. 2005); State v. Warburton, 145 Idaho 760, 185 P.3d 272 (2008).

#### DECISIONS UNDER PRIOR LAW

#### Constitutionality.

In view of former section which stated a requisite general policy for the sale of drugs, defined the public agency which was to apply it and delineated that agency's powers, the failure of the legislature to specifically define

prescription drugs for purposes of former section did not render the section invalid under Idaho Const., Art. II § 1 or Art. III, § as an improper delegation of legislative authority. State v. Kellogg, 98 Idaho 541, 568 P.2d 514 (1977).

## Article II

**37-2702. Authority to control.** — (a) The board shall administer the regulatory provisions of this act and may add substances to or delete or reschedule all substances enumerated in the schedules in sections 37-2705, 37-2707, 37-2709, 37-2711, or 37-2713, Idaho Code, pursuant to the procedures of chapter 52, title 67, Idaho Code. In making a determination regarding a substance, the board shall consider the following:

- (1) the actual or relative potential for abuse;
- (2) the scientific evidence of its pharmacological effect, if known;
- (3) the state of current scientific knowledge regarding the substance;
- (4) the history and current pattern of abuse;
- (5) the scope, duration, and significance of abuse;
- (6) the risk to the public health;
- (7) the potential of the substance to produce psychic or physiological dependence liability; and
- (8) whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and issue a rule controlling the substance if it finds the substance has a potential for abuse.

(c) If the board designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled, or deleted as a controlled substance under federal law and notice thereof is given to the board, the board shall similarly control the substance under this act after the expiration of thirty (30) days from publication in the Federal Register of a final order designating a substance as a controlled substance or rescheduling or deleting a substance, unless within that thirty (30) day period, the board objects to inclusion, rescheduling, or deletion. In that case, the board shall publish the reasons for objection and afford all interested parties an opportunity to be heard. At the conclusion of the hearing, the board shall publish its decision, which shall be final unless altered by statute. Upon publication of objection to inclusion, rescheduling, or deletion under this act by the board, control under this act is stayed until the board publishes its decision.

(e) Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco.

**History.**

I.C., § 37-2702, as added by 1971, ch. 215,  
§ 1, p. 939; am. 1972, ch. 133, § 2, p. 261.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act" in this section refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751.

Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

**JUDICIAL DECISIONS**

**Cited in:** State v. Collinsworth, 96 Idaho 910, 539 P.2d 263 (1975).

**37-2703. Nomenclature.** — The controlled substances listed or to be listed in the schedules in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, are included by whatever official, common, usual, chemical, or trade-name designated.

**History.**

I.C., § 37-2703, as added by 1971, ch. 215,  
§ 1, p. 939.

**37-2704. Schedule I tests.** — The board shall place a substance in schedule I if it finds that the substance:

- (a) Has high potential for abuse; and
- (b) Has no accepted medical use in treatment in the United States or lacks accepted safety for use in treatment under medical supervision.

**History.**

I.C., § 37-2704, as added by 1971, ch. 215,  
§ 1, p. 939.

**37-2705. Schedule I.** — (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl  
piperidinyl]-N-phenylacetamide); (N-[1-(1-methyl-2-phenethyl)-4-

(2) Acetymethadol;

(3) Allylprodine;

(4) Alphacetylmethadol (except levo-alphacetylmethadol also known as  
levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);

(5) Alphameprodine;

(6) Alphamethadol;

(7) Alpha-methylfentanyl;

(8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-  
piperidinyl]-N-phenylpropanamide);

(9) Benzethidine;

(10) Betacetylmethadol;

(11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4- piperidinyl]-  
N-phenylpropanamide);

(12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-  
methyl-4-piperidinyl)-N-phenylpropanamide);

(13) Betameprodine;

(14) Betamethadol;

(15) Betaprodine;

(16) Clonitazene;

(17) Dextromoramide;

(18) Diampromide;

(19) Diethylthiambutene;

(20) Difenoxin;

(21) Dimenoxadol;

(22) Dimepheptanol;

(23) Dimethylthiambutene;

(24) Dioxaphetyl butyrate;

(25) Dipipanone;

(26) Ethylmethylthiambutene;

(27) Etonitazene;

(28) Etoxeridine;

(29) Furethidine;

(30) Hydroxypethidine;

(31) Ketobemidone;

(32) Levomoramide;

(33) Levophenacylmorphan;

(34) 3-Methylfentanyl;

(35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-  
piperidinyl]-N-phenylpropanamide);

(36) Morpheridine;

(37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);

- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl           (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxy piperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;
- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl           (N-phenyl-N-[1-(2-thienyl)ethyl]-4-piperidinyl] propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic sub-

stances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) 4-bromo-2,5-dimethoxy amphetamine;
- (2) 2,5-dimethoxyamphetamine;
- (3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B);
- (4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET);
- (5) 2,5-dimethoxy-4-(n)-propylthiophenethylamine;
- (6) 4-methoxyamphetamine (PMA);
- (7) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (8) 5-methoxy-N,N-diisopropyltryptamine;
- (9) 4-methyl-2,5-dimethoxy-amphetamine (DOM, STP);
- (10) 3,4-methylenedioxy amphetamine;
- (11) 3,4-methylenedioxymethamphetamine (MDMA);
- (12) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (13) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (14) 3,4,5-trimethoxy amphetamine;
- (15) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (16) Alpha-methyltryptamine;
- (17) Bufotenine;
- (18) Diethyltryptamine (DET);
- (19) Dimethyltryptamine (DMT);
- (20) Ibogaine;
- (21) Lysergic acid diethylamide;
- (22) Marihuana;
- (23) Mescaline;
- (24) Parahexyl;
- (25) Peyote;
- (26) N-ethyl-3-piperidyl benzilate;
- (27) N-methyl-3-piperidyl benzilate;
- (28) Psilocybin;
- (29) Psilocyn;
- (30) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:
  - i. Tetrahydrocannabinols:
    - a.  $\Delta^1$  cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

- b.  $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers.
- c.  $\Delta^{3,4}$  cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)
- d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and it's geometric isomers (HU211 or dexanabinol).
- ii. The following synthetic drugs:
  - a. Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  - b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  - c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.
  - d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring with alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.
  - e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl, whether or not substituted in the cyclohexyl ring to any extent.
  - f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl or 2-(4-morpholinyl)ethyl, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.
  - g. [2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (WIN-55,212-2).
  - h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).
  - i. 9-hydroxy-6-methyl-3-[5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10,10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

- (31) Ethylamine analog of phenyclidine (N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;
- (32) Pyrrolidine analog of phenyclidine: 1-(phenylcyclohexyl)-pyrrolidine, PCPy, PHP;
- (33) Thiophene analog of phenyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phenyclidine, TPCP, TCP;
- (34) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;
- (35) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);
- (2) Flunitrazepam (also known as "R2," "Rohypnol");
- (3) Mecloqualone;
- (4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- (1) Aminorex (some other names: aminoxyphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);
- (2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);
- (3) Substituted cathinones. Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

- i. By substitution in the ring system to any extent with alkyl, alkylenedioxy, alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents;
- ii. By substitution at the 3-position with an acyclic alkyl substituent;
- iii. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

- (4) Fenethylline;
- (5) Methcathinone (some other names: 2-(methyl-amino)-propiophenone, alpha-(methylamino)-propiophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);
- (6) (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];

- (7) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);
- (8) N-ethylamphetamine;
- (9) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethylbenzeneethanamine).

**History.**

I.C., § 37-2705, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 1, p. 698; am. 1980, ch. 160, § 1, p. 340; am. 1981, ch. 102, § 1, p. 149; am. 1984, ch. 160, § 1, p. 390; am. 1985, ch. 25, § 1, p. 41; am. 1986, ch. 209, § 1, p. 534; am. 1987, ch. 38, § 1, p. 61; am. 1988,

ch. 190, § 1, p. 337; am. 1989, ch. 177, § 1, p. 428; am. 1995, ch. 1, § 1, p. 3; am. 1996, ch. 36, § 1, p. 90; am. 1998, ch. 160, § 1, p. 545; am. 2003, ch. 185, § 1, p. 499; am. 2004, ch. 302, § 1, p. 845; am. 2010, ch. 117, § 1, p. 243; am. 2011, ch. 46, § 1, p. 105; am. 2011, ch. 47, § 1, p. 109; am. 2011, ch. 134, § 1, p. 368.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 117, added paragraphs (d)(5), (d)(8), (d)(16), and (f)(6) and made related redesignations; and deleted paragraph (g)(3), which read: "4-methylaminorex (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline)."

This section was amended by three 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 46, inserted "2-amino-1-phenol-1-propanone" in paragraph (f)(2), and added paragraph (f)(3) and redesignated former paragraphs (f)(3) to (f)(8) as paragraphs (f)(4) to (f)(9).

The 2011 amendment, by ch. 47, rewrote paragraph (d)(30).

The 2011 amendment, by ch. 134, deleted subsection (g), which was a temporary listing of substances subject to emergency scheduling.

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 2 of S.L. 2011, ch. 46 declared an emergency. Approved March 10, 2011.

Section 2 of S.L. 2011, ch. 47 declared an emergency. Approved March 10, 2011.

**JUDICIAL DECISIONS****ANALYSIS****Constitutionality.****Marijuana.****Quantity.****Constitutionality.**

There is no fundamental right to possess or to grow marijuana, even for personal consumption in the privacy of the home and, under the restrained review test, it was not irrational or arbitrary for the legislature to proscribe its cultivation, even for personal use, and to attach felony penalties for such conduct; accordingly this section and § 37-2732 are not unconstitutional. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

This section and § 37-2732 prohibiting the growing and use of marijuana do not violate the prohibitions against excessive fines and cruel and unusual punishment contained in U.S. Const., amend. 8 and Idaho Const., art. 1, § 6. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

**Marijuana.**

Punishment of three years probation, 45 days in jail and \$1,000 fine was not grossly

disproportionate to offense of possession with intent to manufacture, considering the amount of marijuana and paraphernalia seized, nor was it clearly arbitrary and shocking to the sense of justice. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

**Quantity.**

Because the language of the controlled substances statute is plain and unambiguous, even a trace amount of the substance will satisfy the requirement of the statute, and a refusal to adopt the usable-quantity rule does not lead to a result which is palpably absurd. *State v. Rhode*, 133 Idaho 459, 988 P.2d 685 (1999).

**Cited in:** *State v. Kincaid*, 98 Idaho 440, 566 P.2d 763 (1977); *State v. Mata*, 107 Idaho 863, 693 P.2d 1065 (Ct. App. 1984); *State v. Baiz*, 120 Idaho 292, 815 P.2d 490 (Ct. App. 1991).

**OPINIONS OF ATTORNEY GENERAL**

Provisions of local initiatives allowing persons to use marijuana for medicinal purposes, declaring that the growth and cultivation of industrial hemp is a positive and beneficial farming activity, conflict with state law and are invalid. OAG 07-02.

**37-2706. Schedule II tests.** — The board shall place a substance in schedule II if it finds that:

- (a) The substance has high potential for abuse;
- (b) The substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (c) The abuse of the substance may lead to severe psychic or physical dependence.

**History.**

I.C., § 37-2706, as added by 1971, ch. 215,  
§ 1, p. 939.

**37-2707. Schedule II.** — (a) Schedule II shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Substances, vegetable origin or chemical synthesis. Unless specifically excepted or unless listed in another schedule, any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, naltrexone and their respective salts, but including the following:
  1. Raw opium;
  2. Opium extracts;
  3. Opium fluid extracts;
  4. Powdered opium;
  5. Granulated opium;
  6. Tincture of opium;
  7. Codeine;
  8. Dihydroetorphine;
  9. Diprenorphine;
  10. Ethylmorphine;
  11. Etorphine hydrochloride;
  12. Hydrocodone;
  13. Hydromorphone;
  14. Metopon;
  15. Morphine;
  16. Oripavine;
  17. Oxycodone;
  18. Oxymorphone;
  19. Tapentadol;
  20. Thebaine.

- (2) Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph (b)(1) of this section, except that these substances shall not include the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions which do not contain cocaine or ecgonine.
- (5) Benzoylecgonine.
- (6) Methylbenzoylecgonine (Cocaine — its salts, optical isomers, and salts of optical isomers).
- (7) Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).
- (c) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
- (1) Alfentanil;
  - (2) Alphaprodine;
  - (3) Anileridine;
  - (4) Bezitramide;
  - (5) Bulk Dextropropoxyphene (nondosage forms);
  - (6) Carfentanil;
  - (7) Dihydrocodeine;
  - (8) Diphenoxylate;
  - (9) Fentanyl;
  - (10) Isomethadone;
  - (11) Levo-alphacetylmethadol (also known as levo-alpha-acetylmethadol, levomethadyl acetate, LAAM);
  - (12) Levomethorphan;
  - (13) Levorphanol;
  - (14) Metazocine;
  - (15) Methadone;
  - (16) Methadone — Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
  - (17) Moramide — Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl propane-carboxylic acid;
  - (18) Pethidine (meperidine);
  - (19) Pethidine — Intermediate — A, 4-cyano-1-methyl-4-phenylpiperidine;
  - (20) Pethidine — Intermediate — B, ethyl-4-phenylpiperidine-4-carboxylate;
  - (21) Pethidine — Intermediate — C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
  - (22) Phenazocine;
  - (23) Piminodine;

- (24) Racemethorphan;
- (25) Racemorphan;
- (26) Remifentanil;
- (27) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

- (1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;
- (2) Lisdexamfetamine;
- (3) Methamphetamine, its salts, isomers, and salts of its isomers;
- (4) Phenmetrazine and its salts;
- (5) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Amobarbital;
- (2) Glutethimide;
- (3) Pentobarbital;
- (4) Phencyclidine;
- (5) Secobarbital.

(f) Hallucinogenic substances.

- (1) Nabilone ..... (another name for nabilone:(+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one) (21 C.F.R. 1308.12 (f)).

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

- (1) Immediate precursor to amphetamine and methamphetamine:
  - (a) Anthranilic acid;
  - (b) Ephedrine;
  - (c) Lead acetate;
  - (d) Methylamine;
  - (e) Methyl formamide;
  - (f) N-methylephedrine;
  - (g) Phenylacetic acid;
  - (h) Phenylacetone;
  - (i) Phenylpropanolamine;
  - (j) Pseudoephedrine.

Except that any combination or compound containing ephedrine, or any of its salts and isomers, or phenylpropanolamine or its salts and isomers, or pseudoephedrine, or any of its salts and isomers which is prepared for dispensing or over-the-counter distribution is not a controlled substance for the purpose of this section, unless such substance is possessed, delivered, or possessed with intent to deliver to another with the intent to manufacture

methamphetamine, amphetamine or any other controlled substance in violation of section 37-2732, Idaho Code. For purposes of this provision, the requirements of the uniform controlled substances act shall not apply to a manufacturer, wholesaler or retailer of over-the-counter products containing the listed substances unless such person possesses, delivers, or possesses with intent to deliver to another the over-the-counter product with intent to manufacture a controlled substance.

(2) Immediate precursors to phencyclidine (PCP):

- (a) 1-phenylcyclohexylamine;
- (b) 1-piperidinocyclohexanecarbonitrile (PCC).

(3) Immediate precursor to fentanyl: 4-anilino-N-phenethyl-4-piperidine (ANPP).

**History.**

I.C., § 37-2707, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 3, p. 261; am. 1977, ch. 234, § 2, p. 698; am. 1980, ch. 160, § 2, p. 340; am. 1981, ch. 102, § 2, p. 149; am. 1984, ch. 160, § 2, p. 390; am. 1985, ch. 25, § 2, p. 41; am. 1986, ch. 209, § 2, p. 534; am.

1987, ch. 38, § 2, p. 61; am. 1988, ch. 190, § 2, p. 337; am. 1989, ch. 177, § 2, p. 428; am. 1992, ch. 24, § 1, p. 72; am. 1995, ch. 1, § 2, p. 3; am. 1998, ch. 328, § 1, p. 1058; am. 2000, ch. 110, § 1, p. 242; am. 2010, ch. 117, § 2, p. 243; am. 2011, ch. 134, § 2, p. 368.

## STATUTORY NOTES

**Cross References.**

Uniform controlled substances act, § 37-2751 and notes thereto.

**Amendments.**

The 2010 amendment, by ch. 117, in paragraph (b)(1), added paragraphs 8, 9, 16, and 19 and made related redesignations; added paragraphs (b)(5), (c)(26), and (d)(2), and made related redesignations; and in paragraph (f)(1), substituted "Nabilone" for "Nabilene".

The 2011 amendment, by ch. 134, added paragraph (g)(3).

**Compiler's Notes.**

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

## JUDICIAL DECISIONS

### ANALYSIS

Chain of custody.

Cocaine.

Construction.

Proof of stimulant effect.

Quantity.

Search warrant description.

Sentence.

**Chain of Custody.**

The court determined from the testimony of officer that the white envelope containing drug evidence was sealed when it left the officer and that it was sealed in the same way when the criminologist received it. Mere speculation that the evidence was mishandled or tampered with was insufficient to establish a break in the chain of custody. *State v. Kodesh*, 122 Idaho 756, 838 P.2d 885 (Ct. App. 1992).

a narcotic for regulatory and penalty purposes is not in conflict with constitutional principles of due process, equal protection, and cruel and unusual punishment. *State v. Cianelli*, 101 Idaho 313, 612 P.2d 550 (1980).

The classification of cocaine as a narcotic drug is constitutional. *State v. McNeely*, 104 Idaho 849, 664 P.2d 277 (Ct. App. 1983).

**Construction.**

The phrase "having a stimulant effect on the central nervous system" in subsection (d) of this section modifies the word "substances"

**Cocaine.**

The legislature's classification of cocaine as

not the word "quantity"; had the Idaho legislature intended that a quantitative analysis be required under subsection (d) of this section, the legislature would have set forth required amounts as it did for certain other substances. *State v. Troughton*, 126 Idaho 406, 884 P.2d 419 (Ct. App. 1994).

#### **Proof of Stimulant Effect.**

Whether or not this section required the state to prove that the methamphetamine which defendant delivered to law enforcement agents had a stimulant effect on the central nervous system, defense counsel admitted at oral argument that he had failed to raise the issue at trial and in such a situation, where the issue was not raised below, the court would not consider it on appeal. *State v. Caswell*, 121 Idaho 801, 828 P.2d 830 (1992).

#### **Quantity.**

Although the legislature did not proscribe the possession of "any quantity" of cocaine as it did for methamphetamine, its classification of cocaine as a Schedule II controlled substance and its limited availability demonstrate that the legislature intended the possession of even trace or residual quantities of cocaine to fall within the scope of § 37-2732(c). *State v. Groce*, 133 Idaho 144, 983 P.2d 217 (Ct. App. 1999).

#### **Search Warrant Description.**

Although a warrant describes a controlled

substance in a certain form, the purpose of the search is not limited to finding the substance in that particular form and the scope of the warrant shall extend to alternate forms of the same substance which are similarly controlled by statute. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where a search warrant on its face authorized police to search for PCP on mint leaves or in a powdered form, but instead the PCP was found in a liquid solution, the controlled substance had not lost its identity; it had merely taken a different form still controlled by this section and remained subject to search. *State v. O'Campo*, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

#### **Sentence.**

The three concurrent indeterminate five-year sentences for three counts of delivery of a controlled substance, one for each count, involving a presumed confinement for one and two-thirds years, was held reasonable when viewed upon the facts. *State v. Edwards*, 113 Idaho 821, 748 P.2d 405 (Ct. App. 1987).

**Cited in:** *State v. Hoak*, 120 Idaho 415, 816 P.2d 371 (Ct. App. 1991); *State v. Warren*, 123 Idaho 20, 843 P.2d 170 (Ct. App. 1992); *State v. Fox*, 124 Idaho 924, 866 P.2d 181 (1993).

**37-2708. Schedule III tests.** — The board shall place a substance in schedule III if it finds that:

- (a) The substance has a potential for abuse less than the substances listed in schedules I and II;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

#### **History.**

I.C., § 37-2708, as added by 1971, ch. 215, § 1, p. 939.

### **JUDICIAL DECISIONS**

**Cited in:** *State v. Collinsworth*, 96 Idaho 910, 539 P.2d 263 (1975).

**37-2709. Schedule III.** — (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts,

isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed on August 25, 1971, as excepted compounds under C.F.R. Sec. 308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

- (2) Benzphetamine;
- (3) Chlorphentermine;
- (4) Clortermine;
- (5) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any compound, mixture or preparation containing:
  - i. Amobarbital;
  - ii. Secobarbital;
  - iii. Pentobarbital or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
  - i. Amobarbital;
  - ii. Secobarbital;
  - iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.
- (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof, including, but not limited to:
  - i. Aprobarbital;
  - ii. Butabarbital (secbutabarbital);
  - iii. Butalbital;
  - iv. Butobarbital (butethal);
  - v. Talbutal;
  - vi. Thiameylal;
  - vii. Thiopental;
  - viii. Vinbarbital.
- (4) Chlorhexadol;
- (5) Embutramide;
- (6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;
- (7) Ketamine, its salts, isomers, and salts of isomers — 7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).
- (8) Lysergic acid;
- (9) Lysergic acid amide;
- (10) Methyprylon;
- (11) Sulfondiethylmethane;
- (12) Sulfonethylmethane;

(13) Sulfonmethane;

(14) Tiletamine and zolazepam or any salt thereof.

(d) Nalorphine.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:

(1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:

(i) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(ii) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(iii) Not more than 300 milligrams of dihydrocodeinone, commonly known as hydrocodone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(iv) Not more than 300 milligrams of dihydrocodeinone, commonly known as hydrocodone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(v) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(vi) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;

(vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(viii) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:

(i) Buprenorphine.

(ii) [Reserved].

(f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.

(1) 13beta-ethyl-17beta-hydroxygon-4-en-3-one;

(2) 17alpha-methyl-3alpha, 17beta-dihydroxy-5alpha-androstane;

(3) 17alpha-methyl-3beta, 17beta-dihydroxy-5alpha-androstane;

(4) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;

- (5) 17alpha-methyl-4-hydroxynandrolone;
- (6) 17alpha-methyl-delta1-dihydrotestosterone;
- (7) 19-nor-4-androstenediol;
- (8) 19-nor-4-androstenedione;
- (9) 19-nor-4,9(10)-androstadienedione;
- (10) 19-nor-5-androstenediol;
- (11) 19-nor-5-androstenedione;
- (12) 1-androstenediol;
- (13) 1-androstenedione;
- (14) 3alpha,17beta-dihydroxy-5alpha-androstane;
- (15) 3beta,17beta-dihydroxy-5alpha-androstane;
- (16) 4-androstenediol;
- (17) 4-androstenedione;
- (18) 4-hydroxy-19-nortestosterone;
- (19) 4-hydroxytestosterone;
- (20) 5-androstenediol;
- (21) 5-androstenedione;
- (22) Androstenedione;
- (23) Bolasterone;
- (24) Boldenone;
- (25) Boldione;
- (26) Calusterone;
- (27) Chlorotestosterone (4-chlorotestosterone);
- (28) Chorionic gonadotropin;
- (29) Clostebol;
- (30) Dehydrochlormethyltestosterone;
- (31) Delta1-dihydrotestosterone;
- (32) Desoxymethyltestosterone;
- (33) Dihydrotestosterone (4-dihydrotestosterone);
- (34) Drostanolone;
- (35) Ethylestrenol;
- (36) Fluoxymesterone;
- (37) Formebulone;
- (38) Furazabol;
- (39) Human growth hormones;
- (40) Mestanolone;
- (41) Mesterolone;
- (42) Methandienone;
- (43) Methandranone;
- (44) Methandriol;
- (45) Methandrostenolone;
- (46) Methenolone;
- (47) Methyldienolone;
- (48) Methyltestosterone;
- (49) Methyltrienolone;
- (50) Mibolerone;
- (51) Nandrolone;
- (52) Norbolethone;
- (53) Norclostebol;

- (54) Norethandrolone;
- (55) Normethandrolone;
- (56) Oxandrolone;
- (57) Oxymesterone;
- (58) Oxymetholone;
- (59) Stanolone;
- (60) Stanozolol;
- (61) Stenbolone;
- (62) Testolactone;
- (63) Testosterone;
- (64) Testosterone cypionate;
- (65) Testosterone enanthate;
- (66) Testosterone propionate;
- (67) Tetrahydrogestrinone;
- (68) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product — 7369. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

- (1) Butorphanol.

(i) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

**History.**

I.C., § 37-2709, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 4, p. 261; am. 1977, ch. 234, § 3, p. 698; am. 1980, ch. 160, § 3, p. 340; am. 1982, ch. 91, § 1, p. 165; am.

1984, ch. 160, § 3, p. 390; am. 1992, ch. 24, § 2, p. 72; am. 1996, ch. 36, § 2, p. 90; am. 2000, ch. 110, § 2, p. 242; am. 2003, ch. 185, § 2, p. 499; am. 2006, ch. 203, § 1, p. 620; am. 2010, ch. 117, § 3, p. 243.

**STATUTORY NOTES****Cross References.**

Uniform controlled substances act, § 37-2751 and notes thereto.

**Amendments.**

The 2006 amendment, by ch. 203, inserted "commonly known as hydrocodone" in subsections (e)(1)(iii) and (iv).

The 2010 amendment, by ch. 117, rewrote the section, revising provisions relating to schedule III drugs and other substances.

**Federal References.**

C.F.R. Sec. 308.32, referred to in subdivision (b)(1), has been repealed. In the present version of schedule III in the United States Code of Federal Regulations this reference appears as "§ 1308.32." See 21 C.F.R. §§ 1308.13 and 1308.32.

**Compiler's Notes.**

The term "this act", in the undesignated paragraph following subdivision (f)(68), refers either to S.L. 1989, ch. 197, which is codified as § 37-2711, or to S.L. 1992, ch. 24, which moved provisions relating to anabolic steroids from § 37-2711 to this section and which is

codified as §§ 37-2707, 37-2709, and 37-2711. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The words "this act", in subsection (i), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

S.L. 1996, ch. 36 added present subsection (h) with a paragraph designated as (1) but with no (2).

S.L. 2000, ch. 110 added subsection (g) with a paragraph designated as (1) but with no (2).

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

**JUDICIAL DECISIONS****Elements of Offense.**

In a prosecution for delivery of a controlled substance listed in this section, the state was not required to prove that the substance defendant delivered was a sufficient "usable quantity" that had the potential for abuse associated with a depressant effect on the central nervous system, but only to prove that

defendant delivered a substance containing a controlled drug which the board had determined to have such a potential. *State v. Collinsworth*, 96 Idaho 910, 539 P.2d 263 (1975).

**Cited in:** *State v. Troughton*, 126 Idaho 406, 884 P.2d 419 (Ct. App. 1994).

**37-2710. Schedule IV tests.** — The board shall place a substance in schedule IV if it finds that:

- (a) The substance has a low potential for abuse relative to substances in schedule III;
- (b) The substance has currently accepted medical use in treatment in the United States; and
- (c) Abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances in schedule III.

**History.**

I.C., § 37-2710, as added by 1971, ch. 215, § 1, p. 939.

**37-2711. Schedule IV.** — (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

- (1) No more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;
- (2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbital;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;
- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Dichloralphenazone;
- (16) Estazolam;
- (17) Ethchlorvynol;
- (18) Ethinamate;
- (19) Ethyl loflazepate;
- (20) Fludiazepam;
- (21) Flurazepam;
- (22) Halazepam;
- (23) Haloxazolam;
- (24) Ketazolam;
- (25) Loprazolam;
- (26) Lorazepam;
- (27) Lormetazepam;
- (28) Mebutamate;
- (29) Medazepam;
- (30) Meprobamate;
- (31) Methohexital;
- (32) Methylphenobarbital (mephobarbital);
- (33) Midazolam;

- (34) Nimetazepam;
- (35) Nitrazepam;
- (36) Nordiazepam;
- (37) Oxazepam;
- (38) Oxazolam;
- (39) Paraldehyde;
- (40) Petrichloral;
- (41) Phenobarbital;
- (42) Pinazepam;
- (43) Prazepam;
- (44) Temazepam;
- (45) Tetrazepam;
- (46) Triazolam;
- (47) Quazepam;
- (48) Zaleplon;
- (49) Zolpidem;
- (50) Zopiclone.

(d) Fenfluramine — Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- (1) Dexfenfluramine;
- (2) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Modafinil;
- (8) Pemoline (including organometallic complexes and chelates thereof);
- (9) Phentermine;
- (10) Pipradrol;
- (11) Sibutramine;
- (12) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Pentazocine;
- (2) Fospropofol.

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (c) of this section

from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

**History.**

I.C., § 37-2711, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 4, p. 698; am. 1980, ch. 160, § 4, p. 340; am. 1981, ch. 102, § 3, p. 149; am. 1982, ch. 91, § 2, p. 165; am. 1984, ch. 160, § 4, p. 390; am. 1986, ch. 209,

§ 3, p. 534; am. 1988, ch. 190, § 3, p. 337; am. 1989, ch. 177, § 3, p. 428; am. 1989, ch. 197, § 1, p. 493; am. 1992, ch. 24, § 3, p. 72; am. 1996, ch. 36, § 3, p. 90; am. 1999, ch. 67, § 1, p. 177; am. 2010, ch. 117, § 4, p. 243.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 117, added paragraphs (c)(15), (c)(48), (c)(50), (d)(1), (e)(7), and (f)(2); and made related redesignations.

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The words enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 4 of S.L. 1996, ch. 36 declared an emergency. Approved February 19, 1996.

**JUDICIAL DECISIONS**

**Cited in:** State v. Troughton, 126 Idaho 406, 884 P.2d 419 (Ct. App. 1994).

**37-2712. Schedule V tests.** — The board shall place a substance in schedule V if it finds that:

(a) The substance has low potential for abuse relative to the controlled substances listed in schedule IV;

(b) The substance has currently accepted medical use in treatment in the United States; and

(c) The substance has limited physical dependence or psychological dependence liability relative to the controlled substances listed in schedule IV.

**History.**

I.C., § 37-2712, as added by 1971, ch. 215, § 1, p. 939.

**37-2713. Schedule V.** — (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one

(1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

- (1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;
- (2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;
- (3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;
- (4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;
- (5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;
- (6) Not more than 0.5 milligrams difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

- (1) Lacosamide;
- (2) Pregabalin;
- (3) Propylhexedrine (except as Benzedrex™ inhaler);
- (4) Pyrovalerone.

**History.**

I.C., § 37-2713, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 5, p. 698; am. 1980, ch. 160, § 5, p. 340; am. 1984, ch. 160, § 5, p. 390; am. 1986, ch. 209, § 4, p. 534; am. 1989, ch. 177, § 4, p. 428; am. 1990, ch. 29, § 1, p. 44; am. 2003, ch. 185, § 3, p. 499; am. 2010, ch. 117, § 5, p. 243.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 117, added paragraphs (d)(1) and (d)(2) and made related redesignations.

**Effective Dates.**

Section 6 of S.L. 1980, ch. 160 declared an emergency. Approved March 25, 1980.

**JUDICIAL DECISIONS**

**Cited in:** State v. Troughton, 126 Idaho 406, 884 P.2d 419 (Ct. App. 1994).

**37-2713A. Schedule VI.** — (a) Schedule VI shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated, listed in this section.

(b) Volatile nitrates. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation containing any of the following drugs or their related compounds, congeners or isomers as follows:

- (1) Amyl nitrite;
- (2) Butyl nitrite;
- (3) Isobutyl nitrite;
- (4) Isoamyl nitrite;
- (5) Isopentyl nitrite.

Except that any combination or compound containing amyl nitrite which is prepared pursuant to a prescription issued by a licensed practitioner is not a controlled substance for the purpose of this section.

**History.**

I.C., § 37-2713A, as added by 1989, ch. 268,  
§ 1, p. 654.

**37-2714. Republishing of schedules.** — The board shall revise and republish the schedules semiannually for two (2) years from the effective date [May 1, 1971] of this act, and thereafter annually.

**History.**

I.C., § 37-2714, as added by 1971, ch. 215,  
§ 1, p. 939.

### Article III

**37-2715. Rules.** — The board may promulgate rules and charge reasonable fees relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state.

**History.**

I.C., § 37-2715, as added by 1971, ch. 215,  
§ 1, p. 939.

**37-2716. Registration requirements.** — (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the board in accordance with its rules. A copy of each registration issued shall be transmitted by the board to the director of the Idaho state police.

(b) Persons registered by the board under this act to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(c) The following persons need not register and may lawfully possess controlled substances under this act:

- (1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;
- (2) A common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;
- (3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.
- (d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board rule.

**History.**

I.C., § 37-2716, as added by 1971, ch. 215, 2000, ch. 469, § 85, p. 1450.

§ 1, p. 939; am. 1974, ch. 27, § 79, p. 811; am.

**STATUTORY NOTES****Cross References.**

Director of state police, § 67-2901.

37-2724, 37-2731, 37-2732, 37-2733, 37-2734,

37-2735, 37-2736, 37-2737, 37-2739, 37-2740,

37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**Compiler's Notes.**

The words "this act", in subsections (b) and (c), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to

**37-2717. Registration.** — (a) The board shall register an applicant to manufacture or distribute controlled substances included in sections 37-2705, 37-2707, 37-2709, 37-2711 and 37-2713, Idaho Code, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, or industrial channels;

(2) compliance with applicable state and local law;

(3) any convictions of the applicant under any federal and state laws relating to any controlled substance;

(4) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversions;

(5) furnishing by the applicant of false or fraudulent material in any application filed under this act;

(6) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(7) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture and distribute controlled substances in schedule I or II other than those specified in the registration.

(c) Practitioners must be registered to dispense any controlled substances or to conduct research with controlled substances in schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this article for practitioners engaging in research with nonnarcotic controlled substances in schedules II through V where the registrant is already registered under this article in another capacity. Practitioners registered under federal law to conduct research with schedule I substances may conduct research with

schedule I substances within this state upon furnishing the board evidence of that federal registration.

(d) Compliance by manufacturers and distributors with the provisions of the federal law respecting registration (excluding fees) entitles them to be registered under this act.

#### History.

I.C., § 37-2717, as added by 1971, ch. 215,  
§ 1, p. 939.

#### STATUTORY NOTES

##### Compiler's Notes.

The words "this act", in subsections (a)(5) and (d), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-

2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

#### JUDICIAL DECISIONS

Cited in: State v. Tucker, 97 Idaho 4, 539 P.2d 556 (1975).

**37-2718. Revocation and suspension of registration.** — (a) A registration under section 37-2717, Idaho Code, to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the board upon a finding that the registrant:

- (1) Has furnished false or fraudulent material information in any application filed under this act;
- (2) Has been found guilty of a felony or misdemeanor under any state or federal law relating to any controlled substance; or
- (3) Has had his federal registration suspended or revoked to manufacture, distribute, or dispense controlled substances;
- (4) Has violated any rule of the board promulgated under this chapter, or any federal regulation relating to controlled substances; provided, however, that no revocation or suspension procedure be initiated under this paragraph without the board first giving notice of the procedure to the state licensing board with authority over the registrant's professional license.

(b) The notice required in paragraph (a)(4) of this section shall be given immediately in the event action is taken without an order to show cause as allowed under section 37-2719(b), Idaho Code. In all other cases, such notice shall be given as early as reasonably practicable without risking compromise of the board's investigation but no later than the earlier of:

- (1) Issuance of an order to show cause under section 37-2719(a), Idaho Code; or
  - (2) Setting of a hearing for approval of a resolution of the matter through informal proceedings.
- (c) Revocation or suspension procedures arising solely from "practice related issues" shall be referred by the board to such registrant's state licensing board.
- (1) Upon such referral, the registrant's state licensing board shall commence such investigation of the referred matter as it deems necessary and

shall take action upon the registrant's license or shall inform the board of pharmacy, in writing, that it has investigated the referred matter and has concluded that no action is necessary.

(2) For purposes of this section, the term "practice related issues" refers to issues involving questions regarding the professional conduct of the registrant within the scope of the registrant's profession.

(d) The board may limit revocation or suspension of a registration to the particular controlled substance with respect to which grounds for revocation or suspension exist.

(e) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application therefor, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(f) The board shall promptly notify the bureau and the state licensing board with authority over the registrant's professional license of all orders suspending or revoking registration and all forfeitures of controlled substances.

(g) In the event a state licensing board with authority over a registrant's professional license takes an action against the registrant in any fashion which suspends, restricts, limits or affects the registrant's ability to manufacture, distribute or dispense any controlled substance, the professional licensing board shall promptly notify the board of pharmacy of the action.

(1) Upon such action, the board of pharmacy shall be authorized to issue its order suspending, restricting, limiting or otherwise affecting the registrant's controlled substance registration in the same fashion as the professional licensing board action.

(2) The board of pharmacy order may be issued without further hearing or proceeding, but shall be subject to the effect of any reversal or modification of the professional licensing board action by reason of any appeal or rehearing.

#### History.

I.C., § 37-2718, as added by 1971, ch. 215, § 1, p. 939; am. 1981, ch. 102, § 4, p. 149; am.

1985, ch. 152, § 1, p. 405; am. 2001, ch. 211, § 1, p. 835.

#### STATUTORY NOTES

##### Compiler's Notes.

The words "this act", in subsection (a)(1), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751.

Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

##### Effective Dates.

Section 5 of S.L. 1981, ch. 102 declared an emergency. Approved March 24, 1981.

**37-2719. Order to show cause.** — (a) Except as set forth in section 37-2718(g), Idaho Code, before denying, suspending or revoking a regis-

tion, or refusing a renewal of registration, the board shall serve upon the applicant or registrant an order to show cause why registration should not be denied, revoked, or suspended, or why the renewal should not be refused. The order to show cause shall contain a statement of the basis therefor and shall call upon the applicant or registrant to appear before the board at a time and place not less than thirty (30) days after the date of service of the order, but in the case of a denial or renewal of registration the show cause order shall be served not later than thirty (30) days before the expiration of the registration. These proceedings shall be conducted in accordance with chapter 52, title 67, Idaho Code, without regard to any criminal prosecution or other proceeding. Proceedings to refuse renewal of registration shall not abate the existing registration which shall remain in effect pending the outcome of the administrative hearing.

(b) The board may suspend, without an order to show cause, any registration simultaneously with the institution of proceedings under section 37-2718, Idaho Code, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction.

(c) In conjunction with a proceeding for denying, suspending or revoking a registration, or refusing a renewal of registration, and upon a finding of grounds for such denial, suspension, revocation or refusal to renew, the board may also impose an administrative fine not to exceed the costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts.

**History.**

I.C., § 37-2719, as added by 1971, ch. 215,  
§ 1, p. 939; am. 2001, ch. 211, § 2, p. 835.

**37-2720. Records of registrants.** — Persons registered to manufacture, distribute, or dispense controlled substances under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board issues.

**History.**

I.C., § 37-2720, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735,

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2721. Order forms.** — Controlled substances in schedules I and II

shall be distributed by a registrant to another registrant only pursuant to an order form. Compliance with the provisions of federal law respecting order forms shall be deemed compliance with this section.

**History.**

I.C., § 37-2721, as added by 1971, ch. 215,  
§ 1, p. 939.

**37-2722. Prescriptions.** — (a) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(b) In emergency situations, as defined by rule of the board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of section 37-2720, Idaho Code. No prescription for a schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug as determined under this act or regulation of the bureau or the board, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled more than six (6) months after the date thereof or be refilled more than five (5) times, unless renewed by the practitioner.

(d) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(e) Solely for the purpose of allowing the dispensing of controlled substances pursuant to the prescription of an individual licensed in a jurisdiction other than the state of Idaho, and for no other purpose under this act, with respect to the written or oral prescription of a "practitioner" as required under subsections (a), (b) and (c) of this section, the term "practitioner" shall also include a physician, dentist, veterinarian, scientific investigator or other individual, other than a pharmacy licensed in a jurisdiction other than the state of Idaho, and permitted by such license to dispense, conduct research with respect to or administer the prescribed controlled substance in the course of his professional practice or research in such jurisdiction, so long as the individual is acting within the jurisdiction, scope and authority of his license when issuing the written or oral prescription.

**History.**

I.C., § 37-2722, as added by 1971, ch. 215, § 1, p. 939; am. 2000, ch. 276, § 1, p. 898; am.

2001, ch. 178, § 1, p. 601.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in subsection (c), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this

chapter", being chapter 27, title 37, Idaho Code.

The term "this act", in subsection (e), refers to S.L. 2000, ch. 276, which is codified as §§ 37-2722 and 54-1733. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2723. Form and contents of prescription.** — No person shall write a prescription and no person shall fill, compound or dispense a prescription for a controlled substance unless it is in compliance with applicable federal law.

**History.** § 1, p. 939; am. 1996, ch. 12, § 1, p. 31; am. I.C., § 37-2723, as added by 1971, ch. 215, 2011, ch. 133, § 1, p. 367.

#### STATUTORY NOTES

##### Amendments.

The 2011 amendment, by ch. 133, rewrote the section, revising and removing provisions relating to a prescription for a controlled substance.

##### Effective Dates.

Section 3 of S.L. 2011, ch. 133 declared an emergency. Approved March 25, 2011.

**37-2724. Use in hospital — Form of order — Record — Nursing home, extended care facility.** — An order for schedule II substance for use by a patient in a county or licensed hospital, or in a licensed nursing home or extended care facility employing a unit dose distribution system, shall be in writing on the patient's record, signed by the prescriber, dated, and shall state the name, strength and dosage schedule of the drug ordered. A direct copy of this order will be furnished within seventy-two (72) hours to the pharmacist supplying the medication. The record of said orders and the administration record shall be maintained as a record in the hospital, nursing home or extended care facility for a minimum of three (3) years and shall be available for inspection by all inspectors of the board.

**History.** 1997, ch. 18, § 1, p. 27; am. 2001, ch. 178, § 2, I.C., § 37-2724, as added by 1971, ch. 215, p. 601.  
§ 1, p. 939; am. 1976, ch. 108, § 1, p. 432; am.

**37-2725. Prescription required — Prescription blanks — Possession — Transference — Contents.** — (1) A prescription shall be required for all scheduled drugs. Paper prescriptions shall comply with federal law and shall utilize noncopyable paper that contains security provisions against copying that results in some indication on the copy that it is a copy and therefore rendering it null and void.

(2) Prescription blanks shall not be transferable. Any person possessing any such blank otherwise than is herein provided is guilty of a misdemeanor.

(3) The prescription blank shall contain the name and address of the practitioner. Prescription blanks may contain the printed names of multiple practitioners who are affiliated; provided however, such prescription blanks shall contain a means, in addition to the signature of the practitioner, such as a box or a check, for clear identification of the printed name and address of the practitioner issuing the prescription.

(4) Prescriptions written by a practitioner in a hospital, nursing home, ambulatory surgery center or other health care facility in which a practitioner may attend a patient, other than his or her regular place of business, may be written on prescription blanks kept or provided by that facility that contain the name and address of that facility, but not necessarily of the

practitioner, provided the practitioner's name must be stamped, written or printed on the completed prescription in a manner that is legible to a pharmacist.

(5) Failure of a practitioner to clearly mark the practitioner's printed name and address on the prescription as required in subsection (3) of this section, or to stamp, write or print the practitioner's name legibly as required in subsection (4) of this section shall subject the practitioner to appropriate discipline by the board. The disciplinary measures shall be established by the board in a rule developed through negotiated rulemaking.

(6) Except as provided in section 37-2722, Idaho Code, if a paper prescription is for a schedule II substance, the practitioner shall indicate the desired quantity of the scheduled drug on the prescription blank by both writing out the quantity and by indicating or writing the quantity in numerical form.

(7) Prescription blanks or drugs lost or stolen must be immediately reported to the board.

**History.**

I.C. § 37-2725, as added by 2001, ch. 178,

§ 4, p. 601; am. 2002, ch. 367, § 1, p. 1035;  
am. 2011, ch. 133, § 2, p. 367.

**STATUTORY NOTES**

**Prior Laws.**

Former § 37-2725, which comprised I.C., § 37-2725, as added by 1971, ch. 215, § 1, p. 939; am. 1982, ch. 91, § 3, p. 165; am. 1997, ch. 18, § 2, p. 27, was repealed by S.L. 2001, ch. 178, § 3.

**Amendments.**

The 2011 amendment, by ch. 133, in subsection (1), in the second sentence, deleted "Except as provided in subsection (7) of this section" from the beginning, substituted "Paper prescriptions" for "Written prescriptions," and deleted the former last two sentences, which read: "Board rules, policies or requirements promulgated or issued to implement the provisions of house bill no. 331 of the first regular session of the fifty-sixth Idaho legislature that amended this section 37-2725,

Idaho Code, shall be null and void and without effect after June 30, 2002. The board shall adopt rules using negotiated rulemaking procedures to implement the provisions of this section that are consistent with, but no more stringent than the requirements of this section and the federal requirements for prescription blanks"; deleted former subsection (7), which read: "Prescription blanks issued or approved by the board prior to the effective date of this act shall remain valid and may be used by practitioners after the effective date of this act"; and redesignated former subsection (8) as present subsection (7).

**Effective Dates.**

Section 2 of S.L. 2002, ch. 367 declared an emergency. Approved March 27, 2002.

Section 3 of S.L. 2011, ch. 133 declared an emergency. Approved March 25, 2011.

**37-2726. Filing prescriptions — Database.** — (1) All controlled substances prescriptions shall be filed with the board electronically in a format established by the board or by other method as required by board rule. The board may require the filing of other prescriptions by board rule. The board shall establish by rule the information to be submitted pursuant to the purposes of this section and the purposes set forth in section 37-2730A, Idaho Code.

(2) The board shall create, operate and maintain a controlled substances prescriptions database containing the information submitted pursuant to subsection (1) of this section, to be used for the purposes and subject to the terms, conditions and immunities described in section 37-2730A, Idaho

Code. The database information must be made available only to the following:

- (a) Authorized individuals employed by the boards responsible for conducting investigations related to the licensing and discipline of practitioners;
- (b) Peace officers employed by federal, state and local law enforcement agencies engaged as a specified duty of their employment in enforcing law regulating controlled substances;
- (c) Authorized individuals under the direction of the department of health and welfare for the purpose of monitoring and enforcing that department's responsibilities under the public health, medicare and medicaid laws;
- (d) A licensed practitioner having authority to prescribe controlled substances, to the extent the information relates specifically to a current patient of the practitioner, to whom the practitioner is prescribing or considering prescribing any controlled substance;
- (e) A licensed pharmacist having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance;
- (f) An individual who is the recipient of a controlled substance prescription entered into the database or that individual's attorney, upon providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made or the attorney for that person;
- (g) Upon the lawful order of a court of competent jurisdiction; and
- (h) Prosecuting attorneys, deputy prosecuting attorneys and special prosecutors of a county or city and special assistant attorneys general from the office of the attorney general engaged in enforcing law regulating controlled substances.

(3) The board must maintain records on the information disclosed from the database, including:

- (a) The identification of each individual who requests or receives information from the database and who that individual represents;
- (b) The information provided to each such individual; and
- (c) The date and time the information is requested or provided.

(4) The board shall promulgate rules to ensure that only authorized individuals have access to the database.

(5) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(6) Any person in possession, whether lawfully or unlawfully, of information from the controlled substances prescriptions database which identifies

an individual patient and who knowingly discloses such information to a person not authorized to receive or use such information under any state or federal law, rule or regulation; the lawful order of a court of competent jurisdiction; or written authorization of the individual patient shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law. The provisions of this subsection shall not apply to disclosure of individual patient information by the patient himself. The provisions of this subsection shall not apply to disclosure of information by a prosecuting attorney, deputy prosecuting attorney or special prosecutor of a county or city or by a special assistant attorney general from the office of the attorney general in the course of a criminal proceeding, whether preconviction or postconviction.

(7) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.

(8) The definitions set forth in section 37-2701, Idaho Code, shall apply to this section.

**History.**

I.C. § 37-2726, as added by 2001, ch. 178, § 5, p. 601; am. 2006, ch. 175, § 2, p. 535; am.

2008, ch. 129, § 1, p. 362.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

Department of health and welfare, § 56-1001 et seq.

**Prior Laws.**

Former § 37-2726, which comprised I.C. § 37-2726, as added by 1971, ch. 215, § 1, p. 939, was repealed by S.L. 2001, ch. 178, § 3.

**Amendments.**

The 2006 amendment, by ch. 175, added

“Database” in the section heading and rewrote the section which formerly read: “All controlled substances prescriptions shall be filed with the board electronically or by other method as required by board rule. The board may require the filing of other prescriptions by board rule.”

The 2008 amendment, by ch. 129, added paragraph (2)(h) and present subsections (5) and (6) and redesignated former subsections (5) and (6) as subsections (7) and (8).

**37-2727. Controlled substances in narcotic treatment programs.**

—(1) At a facility with a controlled substance registration certificate issued by the United States department of justice, drug enforcement administration, for the operation of a narcotic treatment program, a nurse licensed under chapter 14, title 54, Idaho Code, may, pursuant to a valid order of a physician licensed under chapter 18, title 54, Idaho Code:

(a) Prepare and administer to a patient at that facility a controlled substance whether or not a practitioner is present; and

(b) Deliver at that facility to a patient for subsequent use by the patient off-site, take-home doses of a controlled substance, provided that:

(i) The patient is entitled to receive take-home doses of the controlled substance;

(ii) The take-home doses delivered by the nurse to the patient were obtained at the facility by the nurse from a locked storage area suitable

to prevent unauthorized access and to ensure a proper environment for preservation of the drugs within such area; and

(iii) The take-home doses were prepared pursuant to a valid order of the physician by a pharmacist licensed under chapter 17, title 54, Idaho Code, and were delivered by the pharmacist to the locked storage area at the facility in a suitable container appropriately labeled for subsequent delivery by the nurse to the patient and for subsequent use by the patient entitled to receive the take-home doses of the controlled substance.

(2) A nurse acting under the authority of this section is exempt from the registration requirements imposed by this chapter.

**History.**

I.C., § 37-2727, as added by 2007, ch. 250,  
§ 1, p. 735.

**STATUTORY NOTES**

**Prior Laws.** § 37-2727, as added by 1971, ch. 215, § 1, p.  
Former § 37-2727, which comprised I.C., 939, was repealed by S.L. 2001, ch. 178, § 3.

**37-2728 — 37-2730. Retention of prescription book by prescriber — Prescription book open for inspection — Filling prescriptions — Disposition of original and copy. [Repealed.]**

**STATUTORY NOTES**

**Compiler's Notes.**

The following sections were repealed by  
S.L. 2001, ch. 178, § 3:

37-2728 which comprised I.C., § 37-2728,  
as added by 1971, ch. 215, § 1, p. 939.

37-2729 which comprised I.C., § 37-2729,  
as added by 1971, ch. 215, § 1, p. 939.

37-2730 which comprised I.C., § 37-2730,  
as added by 1971, ch. 215, § 1, p. 939.

**37-2730A. Prescription tracking program.** — (1) The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set forth in section 37-2726(2), Idaho Code. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners

or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(4) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

- (a) The furnishing of information under the conditions herein provided;
  - (b) The receiving and use of, or reliance on, such information;
  - (c) The fact that any such information was not furnished; or
  - (d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.
- (5) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

**History.**

I.C., § 37-2730A, as added by 2000, ch. 194, § 1, p. 479; am. 2001, ch. 178, § 6, p. 601; am.

2006, ch. 175, § 3, p. 535.

**STATUTORY NOTES****Amendments.**

The 2006 amendment, by ch. 175, in subsection (2), rewrote the second sentence, which formerly read: "The board may report this information to the appropriate law enforcement agency, Medicaid or medicare agency or licensing board" and substituted "appropriate law enforcement agency, medicare or medicare agency or licensing board" for "agency or board" in the third sentence; deleted former subsections (3) and (4), which read: "(3) The board may, in its discretion, authorize release of information from the tracking program to patients, practitioners and pharmacists where release of such information may be of assistance in preventing or avoiding inappropriate use of controlled substances.

"(4) Information obtained from the program is confidential and, except as otherwise

provided by this section, must not be disclosed by the board or by any recipient of such information from the board, provided however, such information must be disclosed:

"(a) Upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney; or

"(b) Upon the lawful order of a court of competent jurisdiction"; and redesignated former subsections (6) and (7) as present subsections (4) and (5).

**Compiler's Notes.**

Section 2 of S.L. 2002, ch. 27 amended section 4 of S.L. 2000, ch. 194 to delete the July 1, 2002 sunset date for this section.

**37-2731. Information required on label.** — (a) The practitioner dispensing a controlled substance listed in schedule II shall affix to the package a label showing date of dispensing, the dispenser's name and address, the serial number of the prescription if applicable, the name of the patient, the name of the prescribing practitioner, and directions for use and cautionary statements, if any, contained in such prescription as required by law.

(b) The practitioner dispensing controlled substances listed in schedule III or IV shall affix to the package a label showing the dispenser's name and address, the serial number if applicable, and date of initial dispensing, the name of the patient, the name of the practitioner issuing the prescription, and directions for use and cautionary statements, if any, contained in such prescription as required by law.

(c) The practitioner dispensing a controlled substance listed in schedule V pursuant to a prescription shall affix to the package a label showing the dispenser's name and address, the serial number if applicable, and the date of dispensing, the name of the patient, the name of the practitioner issuing the prescription, the directions for use and cautionary statements, if any, contained in such prescription as required by law.

**History.** 215, § 1, p. 939; am. 1972, ch. 133, § 5, p. I.C., § 37-2731, as added by Acts 1971, ch. 261.

#### STATUTORY NOTES

**Effective Dates.** this act shall take effect from and after July 1, Section 14 of S.L. 1972, ch. 133, provided 1972.

#### JUDICIAL DECISIONS

**Cited in:** State v. Morris, 131 Idaho 562, 961 P.2d 653 (Ct. App. 1998).

### Article IV

**37-2732. Prohibited acts A — Penalties.** — (a) Except as authorized by this chapter, it is unlawful for any person to manufacture or deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(A) A controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, except as provided for in section 37-2732B(a)(3), Idaho Code, is guilty of a felony and upon conviction may be imprisoned for a term of years not to exceed life imprisonment, or fined not more than twenty-five thousand dollars (\$25,000), or both;

(B) Any other controlled substance which is a nonnarcotic drug classified in schedule I, or a controlled substance classified in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars (\$15,000), or both;

(C) A substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars (\$10,000), or both;

(D) A substance classified in schedules V and VI, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars (\$5,000), or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(A) A counterfeit substance classified in schedule I which is a narcotic drug, or a counterfeit substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than fifteen (15) years, fined not more than twenty-five thousand dollars (\$25,000), or both;

- (B) Any other counterfeit substance classified in schedule I which is a nonnarcotic drug contained in schedule I or a counterfeit substance contained in schedule III, is guilty of a felony and upon conviction may be imprisoned for not more than five (5) years, fined not more than fifteen thousand dollars (\$15,000), or both;
- (C) A counterfeit substance classified in schedule IV, is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, fined not more than ten thousand dollars (\$10,000), or both;
- (D) A counterfeit substance classified in schedules V and VI or a noncontrolled counterfeit substance, is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than five thousand dollars (\$5,000), or both.
- (c) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his professional practice, or except as otherwise authorized by this chapter.
- (1) Any person who violates this subsection and has in his possession a controlled substance classified in schedule I which is a narcotic drug or a controlled substance classified in schedule II, is guilty of a felony and upon conviction may be imprisoned for not more than seven (7) years, or fined not more than fifteen thousand dollars (\$15,000), or both.
- (2) Any person who violates this subsection and has in his possession lysergic acid diethylamide is guilty of a felony and upon conviction may be imprisoned for not more than three (3) years, or fined not more than five thousand dollars (\$5,000), or both.
- (3) Any person who violates this subsection and has in his possession a controlled substance which is a nonnarcotic drug classified in schedule I except lysergic acid diethylamide, or a controlled substance classified in schedules III, IV, V and VI is guilty of a misdemeanor and upon conviction thereof may be imprisoned for not more than one (1) year, or fined not more than one thousand dollars (\$1,000), or both.
- (d) It shall be unlawful for any person to be present at or on premises of any place where he knows illegal controlled substances are being manufactured or cultivated, or are being held for distribution, transportation, delivery, administration, use, or to be given away. A violation of this section shall deem those persons guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than three hundred dollars (\$300) and not more than ninety (90) days in the county jail, or both.
- (e) If any person is found to possess marijuana, which for the purposes of this subsection shall be restricted to all parts of the plants of the genus Cannabis, including the extract or any preparation of cannabis which contains tetrahydrocannabinol, in an amount greater than three (3) ounces net weight, it shall be a felony and upon conviction may be imprisoned for not more than five (5) years, or fined not more than ten thousand dollars (\$10,000), or both.
- (f) If two (2) or more persons conspire to commit any offense defined in this act, said persons shall be punishable by a fine or imprisonment, or both, which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the conspiracy.

- (g)(1) It is unlawful for any person to manufacture or distribute a "simulated controlled substance," or to possess with intent to distribute, a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars (\$1,000) and not more than one (1) year in the county jail, or both.
- (2) It is unlawful for any person to possess a "simulated controlled substance." Any person who violates this subsection shall, upon conviction, be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300) and not more than six (6) months in the county jail, or both.
- (h) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale simulated controlled substances. Any person who violates this subsection is guilty of a misdemeanor and shall be punished in the same manner as prescribed in subsection (g) [(g)(1)] of this section.
- (i) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in section 37-2701(aa), Idaho Code, in the course of professional practice or research.
- (j) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact.
- (k) Upon conviction of a felony or misdemeanor violation under this chapter or upon conviction of a felony pursuant to the "racketeering act," section 18-7804, Idaho Code, or the money laundering and illegal investment provisions of section 18-8201, Idaho Code, the court may order restitution for costs incurred by law enforcement agencies in investigating the violation. Law enforcement agencies shall include, but not be limited to, the Idaho state police, county and city law enforcement agencies, the office of the attorney general and county and city prosecuting attorney offices. Costs shall include, but not be limited to, those incurred for the purchase of evidence, travel and per diem for law enforcement officers and witnesses throughout the course of the investigation, hearings and trials, and any other investigative or prosecution expenses actually incurred, including regular salaries of employees. In the case of reimbursement to the Idaho state police, those moneys shall be paid to the Idaho state police for deposit into the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code. In the case of reimbursement to the office of the attorney general, those moneys shall be paid to the general fund. A conviction for the purposes of this section means that the person has pled guilty or has been found guilty, notwithstanding the form of the judgment(s) or withheld judgment(s).

**History.**

I.C., § 37-2732, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 6, p. 261; am. 1972, ch. 409, § 1, p. 1195; am. 1974, ch. 242, § 1, p. 1606; am. 1977, ch. 185, § 1, p. 515; am. 1982, ch. 169, § 2, p. 442; am. 1983, ch. 218, § 2, p. 599; am. 1984, ch. 200, § 1, p.

489; am. 1986, ch. 286, § 1, p. 709; am 1989, ch. 268, § 2, p. 654; am. 1992, ch. 20, § 1, p. 64; am. 1993, ch. 105, § 1, p. 266; am. 1999, ch. 143, § 1, p. 407; am. 2000, ch. 469, § 86, p. 1450; am. 2004, ch. 242, § 1, p. 705; am. 2009, ch. 108, § 3, p. 344; am. 2010, ch. 118, § 3, p. 256.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

Exceptions, excuses, provisos, and exemptions need not be negated in a complaint, information or indictment to enforce the provisions of this act, § 19-1433.

State police, § 67-2901 et seq.

Uniform controlled substances act, § 37-2751 and notes thereto.

**Amendments.**

The 2009 amendment, by ch. 108, inserted “and driving while under the influence” in the fourth sentence in subsection (k).

The 2010 amendment, by ch. 118, updated the section reference in subsection (i) in light of the 2010 amendment of § 37-2701.

**Compiler's Notes.**

The term “this act” in subsection (f) refers to S.L. 1977, ch. 185, which is codified only as this section. Probably the reference should be to “this section.”

The bracketed insertion in subsection (h) was added by the compiler. At the time that subsection (h) was added to this section in 1983, the referenced penalty in subsection (g) was identical to that now found in paragraph (1) of subsection (g).

The letter “s” enclosed in parentheses so appeared in the law as enacted.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

Section 5 of S.L. 1972, ch. 409, provided this act shall take effect from and after July 1, 1972.

Section 3 of S.L. 1982, ch. 169 declared an emergency. Approved March 23, 1982.

Section 2 of S.L. 1984, ch. 200 declared an emergency. Approved April 3, 1984.

Section 2 of S.L. 2004, ch. 242 declared an emergency. Approved March 23, 2004.

**JUDICIAL DECISIONS****ANALYSIS**

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- Burden of proof.
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#### **Appeal.**

Where district court accepted defendant's conditional plea of guilty pursuant to Idaho R. Civ. P. 11(a)(2) to felony possession of marijuana in excess of three ounces under subsection (e) of this section, defendant was allowed to reserve certain adverse rulings for appeal. *State v. Wengren*, 126 Idaho 662, 889 P.2d 96 (Ct. App. 1995).

#### **Burden of Proof.**

To obtain convictions of manufacturing marijuana, the state had the burden of proving beyond a reasonable doubt that each of the defendants had cultivated, or had aided and abetted in cultivating, the marijuana. *State v. Vinton*, 110 Idaho 832, 718 P.2d 1270 (Ct. App. 1986).

#### **Conspiracy.**

The essential elements of conspiracy are the existence of an agreement to accomplish an illegal objective, coupled with one or more overt acts in furtherance of the illegal purpose and the requisite intent necessary to commit the underlying substantive offense. *State v. Martin*, 113 Idaho 461, 745 P.2d 1082 (Ct. App. 1987).

Once a conspiracy is shown, there must be evidence linking the defendant with it. *State v. Martin*, 113 Idaho 461, 745 P.2d 1082 (Ct. App. 1987).

Agreement to conspire need not be proven directly, but may be inferred from circumstan-

tial evidence. *State v. Martin*, 113 Idaho 461, 745 P.2d 1082 (Ct. App. 1987).

Where the defendant's wife had been heavily involved in distributing methamphetamine and she pled guilty to a charge of conspiracy to deliver methamphetamine, the defendant accompanied his wife on several occasions either to pick up narcotics or to make payments, a witness testified that the defendant had agreed that his wife would sell methamphetamine and that he encouraged and assisted his wife in her activities, at least one recorded conversation revealed that the defendant and his wife had requested an amount significantly more than necessary for personal use, and during a search of the defendant's residence, police found methamphetamine, the jury reasonably could infer the existence of a conspiracy to deliver methamphetamine and could infer a connection between the defendant and the conspiracy. *State v. Martin*, 113 Idaho 461, 745 P.2d 1082 (Ct. App. 1987).

Act in furtherance of conspiracy need be committed by only one member of the conspiracy, and the act is then imputed to all other conspirators. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

The prosecution must allege and prove an overt act in order to obtain a conviction for conspiracy to violate subsection (f) of this section. *State v. Brown*, 113 Idaho 480, 745

P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

The overt act requirement to obtaining a conviction under subsection (f) of this section is satisfied by slight evidence, and the act in furtherance of the conspiracy need not itself be criminal. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

Where the telephone calls gave meaning to the conspirators' other acts of visiting prison and possessing marijuana, the prosecutor's information, taken as a whole, contained sufficient allegations to satisfy the pleading requirement of an overt act. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

The agreement to conspire, or aspects of it, cannot satisfy the overt act requirement to obtaining a conviction under this section. *State v. Brown*, 113 Idaho 480, 745 P.2d 1101 (Ct. App. 1987), cert. denied, 116 Idaho 467, 776 P.2d 829 (1988).

Where an officer involved in a vehicle search performed at the police station, testified that he had extensive experience in drug enforcement, where he stated that, in his opinion, the chemicals and equipment found in the vehicle could be used to manufacture methamphetamine, where the chemicals and equipment were found in a vehicle occupied by defendants, and where the state submitted evidence that in preparation for departure, defendant and co-defendant had left with an empty vehicle and had returned to retrieve another co-defendant with a vehicle loaded with the "stuff," the state produced sufficient evidence to support the probable inference that there was an agreement between the parties, and the magistrate did not err in finding probable cause to bind defendant over to district court for trial on charges of conspiracy to manufacture a controlled substance. *State v. Munhall*, 118 Idaho 602, 798 P.2d 61 (Ct. App. 1990).

#### **Constitutionality.**

The title of the legislative act which enacted this section sufficiently describes the subject matter as required by Idaho Const., Art. III, § 16 and this section is not unconstitutionally void. *State v. O'Bryan*, 96 Idaho 548, 531 P.2d 1193 (1975).

Subsection (c)(2) [now (e)] does not abridge any right of privacy implicitly guaranteed by the Idaho or U.S. Constitutions. *State v. Kincaid*, 98 Idaho 440, 566 P.2d 763 (1977).

This section, by prohibiting the possession of substances acquired before its effective date, does not unconstitutionally deprive persons of their property without just compensation. *State v. Kellogg*, 100 Idaho 483, 600 P.2d 787 (1979).

There is no fundamental right to possess or to grow marijuana, even for personal con-

sumption in the privacy of the home and, under the restrained review test, it was not irrational or arbitrary for the legislature to proscribe its cultivation, even for personal use, and to attach felony penalties for such conduct; accordingly this section and § 37-2705 are not unconstitutional. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

Section 37-2705 and this section prohibiting the growing and use of marijuana do not violate the prohibitions against excessive fines and cruel and unusual punishment contained in U.S. Const., amend. 8 and Idaho Const., art. 1, § 6. *State v. Kelly*, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

Separate convictions for manufacturing a controlled substance and for possessing a controlled substance with intent to deliver did not violate constitutional protections against double jeopardy; each crime requires proof of an element not required by the other. *State v. Randles*, 115 Idaho 611, 768 P.2d 1344 (Ct. App. 1989), aff'd in part, 117 Idaho 344, 787 P.2d 1152 (1990).

#### **Constructive Possession.**

In order to prove constructive possession, knowledge of the controlled substance and physical control of the controlled substance must be independently proven beyond a reasonable doubt, by either circumstantial or direct evidence. *State v. Rozajewski*, 130 Idaho 644, 945 P.2d 1390 (Ct. App. 1997).

Constructive possession of a controlled substance exists where a nexus between the accused and the substance is sufficiently proven so as to give rise to the reasonable inference that the accused was not simply a bystander but, rather, had the power and intent to exercise dominion and control over the substance. *State v. Rozajewski*, 130 Idaho 644, 945 P.2d 1390 (Ct. App. 1997).

Although defendant may not have been in exclusive possession of her residence — which was occupied by three to ten people when the police arrived — there was substantial evidence to show that she did have exclusive possession of her bedroom — no one was inside, there was women's and unisex clothing in the room, and a sealed envelope addressed to defendant in a bag in the room. Consequently, there was evidence of circumstances to buttress an inference that defendant knew of and exercised control over the cocaine found in the dresser in what was proven to be her bedroom. *State v. Crawford*, 130 Idaho 592, 944 P.2d 727 (Ct. App. 1997).

#### **Continuous Single Act.**

Where in a prosecution of defendant for both conspiracy to deliver a controlled substance and for aiding and abetting the deliv-

ery of a controlled substance, the evidence showed that everything the defendant did to aid and abet the delivery of the cocaine, he did also in furtherance of the conspiracy, his conduct was one continuous "act," and, therefore, he could be convicted and sentenced of only one crime but not both. *State v. Gallatin*, 106 Idaho 564, 682 P.2d 105 (Ct. App. 1984).

Where the state proved an intent to deliver marijuana as it was being produced by the manufacturing process, but where there was no evidence of an "act" by defendant in committing the crime of possession with intent to deliver that was not also an "act" of manufacturing marijuana, it was double jeopardy to punish defendant for both crimes. *State v. Kluss*, 125 Idaho 14, 867 P.2d 247 (Ct. App. 1993).

#### Delivery.

A violation of subsection (a)(1)(B) of this section occurs when a controlled substance is intentionally and unlawfully delivered; it is immaterial that the recipient is an unexpected person. *State v. Castillo*, 108 Idaho 205, 697 P.2d 1219 (Ct. App. 1985).

Where defendant was charged with aiding and abetting the delivery of marijuana, although he did not touch the marijuana, his involvement in the sale was a combination of his presence at the scene and comments he made during the transaction, and, since it was difficult to consider his statements as anything other than counseling the sale and an expression of his intent to see the delivery completed, there was substantial evidence to establish beyond a reasonable doubt that defendant aided and abetted the delivery of the marijuana. *State v. Hickman*, 119 Idaho 366, 806 P.2d 959 (Ct. App. 1991).

Defendant's conviction for conspiracy to deliver methamphetamine was vacated, where the state failed to argue or present any evidence to show that defendant intended to deliver the methamphetamine to a third party. *State v. Warburton*, 145 Idaho 760, 185 P.3d 272 (2008).

#### Duress.

Where a defendant picked up a package at the airport that the police knew contained methamphetamine, and where the police officer, who did not tell defendant that he was a police officer, told defendant that he knew what was inside the package and would call police unless she gave him a "pinch" of it, such substance was not delivered under duress. Defendant failed to show how her life would be endangered if she had refused to deliver the illegal substance; therefore, trial judge did not err in denying defendant's motion to dismiss the delivery charge. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Because defendant convicted of delivery of controlled substance did not show he sold cocaine under any type of threat, nor that he

reasonably believed his life would be endangered if he refused to participate in the transaction, trial court's denial of requested instruction on the affirmative defense of duress was affirmed. *State v. Canelo*, 129 Idaho 386, 924 P.2d 1230 (Ct. App. 1996).

#### Double Jeopardy.

Since the intent of the legislature in enacting § 37-2739B clearly was to provide for an enhanced minimum term of confinement as a penalty upon the commission of drug offenses within 1000 feet of schools, defendant's claim that, since possession with intent to deliver a controlled substance is a lesser included offense of possession of a controlled substance with intent to deliver within 1000 feet of a school, he suffered multiple punishments for the same offense, in violation of double jeopardy protection, must fail. *State v. Ayala*, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

Where defendant was charged with a single crime of possession of a controlled substance with intent to deliver subject to an enhanced penalty, § 19-1719 did not apply. *State v. Ayala*, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

Defendant's conviction for possession of a controlled substance with intent to deliver was not barred by the doctrine of double jeopardy due to the prior civil forfeiture of his property in an action brought under § 37-2744 since the United States supreme court in *United States v. Ursery*, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996) declared that civil forfeiture in general, and specifically in cases involving drug statutes, do not constitute punishment for purposes of double jeopardy. *State v. Ayala*, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

#### Entrapment.

Where defendant picked up a package at the airport that the police knew contained methamphetamine, action of the police officer, who did not tell defendant that he was a police officer, in telling defendant that he knew what was inside the package and would call police unless she gave him a "pinch" of it, was not entrapment since the ruse was not to convince an innocent citizen to commit a crime, but to discover whether defendant knew that the package sent to her contained methamphetamine, and as such, it served as a legitimate method of ferreting out a crime. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Because insufficient evidence existed upon which to find drug dealer who had conversed with officer's informant was an agent of the state and because taped conversation fragment between these two failed to make a *prima facie* showing that they conspired together to induce defendant to deliver drugs, district court properly denied defendant's requested jury instruction on entrapment. *State*

v. Canelo, 129 Idaho 386, 924 P.2d 1230 (Ct. App. 1996).

#### Evidence.

Where defendant was charged with possession of a controlled substance with intent to deliver, the fact that he was caught with 394.4 grams of marijuana and 3.828 grams hashish, and testimony of narcotics expert that based on his experience such substances were being held for sale was enough substantial and competent evidence to support conviction. State v. Badger, 96 Idaho 168, 525 P.2d 363 (1974).

Where evidence showed that a search had turned up both marijuana and heroin, and paraphernalia used in connection with both, that defendant admitted knowledge of the marijuana and was found within inches of the heroin, that he denied knowledge of the heroin before the arresting officers were aware of its nature, that papers were found listing the searched premises as the defendant's address, and where the marijuana and drug-related paraphernalia were found in common areas to which he had access, there was substantial evidence to support his convictions for possession of both drugs. State v. Greene, 100 Idaho 464, 600 P.2d 140 (1979).

Where defendant's evidence did not contradict the state chemist's opinion that the capsules contained a controlled substance, i.e., amobarbital and secobarbital, instead, he attempted to discredit the state chemist's opinion by introducing expert testimony which challenged the reliability of the testing procedures used, such a challenge went only to the weight to be afforded testimony. State v. Kellogg, 100 Idaho 483, 600 P.2d 787 (1979).

Where the expert testimony showed that the defendant when arrested had in his possession a sufficient quantity of PCP either to prepare more than 800 ordinary packets of solid material, or to distribute some 40 to 70 vials of liquid PCP solution having a total value between \$4,000 and \$7,000, the evidence afforded a substantial basis for the jury to infer an intent to deliver. State v. O'Campo, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where informant and undercover officer, who was wearing a hidden microphone, followed by another officer in an unmarked vehicle, who was tape recording the conversations made in undercover officer's presence, picked up defendant who directed them to a certain house which defendant entered and then returned accompanied by a friend who sold the officer a white envelope containing a substance that was later identified as PCP, the evidence was more than sufficient to convict defendant of aiding and abetting in the delivery of a controlled substance. State v. Sharp, 104 Idaho 691, 662 P.2d 1135 (1983).

In prosecution for violation for conspiracy to violate this chapter, court did not abuse its

discretion by admitting evidence of the co-conspirators' statements before there was independent proof of the conspiracy for, although not explicit on the record, it was clear that the state "promised" to produce independent proof of the conspiracy, in fact, the district court expressly admitted the testimony upon the condition that the state produce sufficient independent proof of the conspiracy and the court recognized its power to strike those statements if proof was not forthcoming. State v. Mata, 107 Idaho 863, 693 P.2d 1065 (Ct. App. 1984).

In a prosecution for conspiracy to violate this section, hearsay statements of co-conspirators were properly admitted where a prima facie proof of the conspiracy was presented by independent evidence. Evidence that a co-conspirator arranged a narcotics transaction by calling defendant's phone number, that narcotics transactions took place at the defendant's house while he was present, and that a search of defendant's house revealed packaging and paraphernalia similar to those used by co-conspirators was adequate independent evidence. State v. Mata, 107 Idaho 863, 693 P.2d 1065 (Ct. App. 1984).

In prosecution for delivery of cocaine, the trial court did not err in admitting drug paraphernalia evidence, even though the defendant was not charged with the paraphernalia violation, because the evidence was clearly relevant to show, if nothing more, that the defendant had the accoutrements necessary to deal cocaine. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

Verdict on conviction for possession of psilocybin mushrooms with intent to deliver was not supported by substantial evidence since state did not offer evidence which established that defendant, individually, knew of the illegal drugs and that he exercised dominion over them; the state did not meet this requirement since when the police began their search of the car, defendant told the officers that the bag with the mushrooms in it was not his and since, at trial, defendant's passenger repeatedly declared that he, and not defendant, owned the mushrooms. State v. Burnside, 115 Idaho 882, 771 P.2d 546 (Ct. App. 1989).

Where the only evidence the police had against defendant at the time of his arrest for conspiracy to deliver a controlled substance was that he was with another, whom the police did have probable cause to believe had delivered a controlled substance, defendant's mere presence was not sufficient to lead a person of ordinary care and prudence to believe or entertain an honest and strong suspicion that defendant was guilty of conspiring to deliver a controlled substance; the arrest was made without probable cause and was illegal. State v. Weber, 116 Idaho 449, 776 P.2d 458 (1989).

Where no evidence was produced at trial of fingerprints, footprints, or any other physical evidence which would have connected either defendant to the cultivation activity in the greenhouse, a conviction of either defendant for manufacturing marijuana could not be sustained. State v. Randles, 117 Idaho 344, 787 P.2d 1152 (1990).

Evidence of other acts was inadmissible under Idaho Evidence Rule 404 to prove that informant acted in conformity with a character trait of being an overreaching government informant who would coerce innocent people into dealing in drugs and was not a sufficient indication of the existence of a habit to permit admission of the evidence under Idaho Evidence Rule 406. State v. Rodriguez, 118 Idaho 948, 801 P.2d 1299 (Ct. App. 1990).

Where defendant admitted he was the go-between in the consummation of the sale of marihuana and accepted money from the police officer in exchange for approximately one ounce of marihuana, when the jury found defendant was guilty of "delivery" of a controlled substance, the evidence was sufficient to sustain the conviction. State v. Walker, 121 Idaho 18, 822 P.2d 537 (Ct. App. 1991).

While chemical analysis is preferable, it is not essential to prove the identity of a controlled substance; circumstantial evidence may be sufficient to prove the identity of a substance where laboratory analysis is not available; however, it remains incumbent upon the state to provide evidence that meets the standard of proof beyond a reasonable doubt. State v. Mitchell, 130 Idaho 134, 937 P.2d 960 (Ct. App. 1997).

There was substantial evidence to support the inference that the defendant knowingly possessed cocaine where drug paraphernalia, including a scale with cocaine residue, was found in his truck. State v. Groce, 133 Idaho 144, 983 P.2d 217 (Ct. App. 1999).

#### —Chain of Custody.

United Parcel Service supervisor, who had control of a package containing a controlled substance between the possession of two witnesses, was not called to testify, but defendant offered no evidence of tampering or any evidence that would raise a suspicion that the evidence had been altered during the supervisor's possession of the package, and mere speculation is insufficient to establish a break in the chain of custody. State v. Wilson, 120 Idaho 643, 818 P.2d 347 (Ct. App. 1991).

The court determined from the testimony of officer that the white envelope containing drug evidence was sealed when it left the officer and that it was sealed in the same way when the criminologist received it. Mere speculation that the evidence was mishandled or tampered with was insufficient to establish a break in the chain of custody. State v. Kodesh, 122 Idaho 756, 838 P.2d 885 (Ct. App. 1992).

#### —Cultivated Marijuana.

Where some of the marijuana plants were growing in containers and had been "groomed" to be more productive, many of the plants had been watered and fertilized with a horse manure mixture or compost, some plants had been boxed in with poles and the area at the base of the plants had been cleared of weeds, and other plants had small, coded tags attached to them as if to identify certain plants, the evidence was clear that the marijuana was cultivated and not wild. State v. Vinton, 110 Idaho 832, 718 P.2d 1270 (Ct. App. 1986).

#### —Drug Dealers.

In the absence of information showing that defendant dealt drugs in the past, the magistrate could reasonably conclude that defendant was a drug trafficker and although proof of such facts might have lent additional support to the inference that defendant was involved in drug dealing, its absence does not detract from the inference the magistrate reasonably could draw from the quantity of drugs alone. State v. Sholes, 120 Idaho 639, 818 P.2d 343 (Ct. App. 1991).

Where United Parcel Manager opened a package addressed to a non-existent address and discovered a controlled substance, defendant later claimed the package, and the amount signified the controlled substance was intended for further distribution, the magistrate reasonably could infer that defendant was involved in drug dealing. State v. Sholes, 120 Idaho 639, 818 P.2d 343 (Ct. App. 1991).

#### —Individual Guilt.

There must be substantial evidence, either direct or circumstantial, that establishes the guilt of each defendant as an individual rather than the collective guilt of two or more persons; the state's evidence establishing the existence of cultivated marijuana and the status of the defendants as joint owners of the property where some of the marijuana was found did not constitute substantial evidence to uphold the conviction of either defendant individually. State v. Vinton, 110 Idaho 832, 718 P.2d 1270 (Ct. App. 1986).

Marijuana packaged in a baggie found in defendant's purse, which expert testimony established as the type of packaging normally used to distribute marijuana for sale, was sufficient to identify defendant as an individual connected with marijuana being dried, processed, weighed and packaged throughout a particular house. State v. Randles, 117 Idaho 344, 787 P.2d 1152 (1990).

There was no question that the evidence tying defendant to the controlled substances was sufficient for a jury to infer individual guilt; the district court committed no error in instructing the jury on constructive and nonexclusive possession. State v. Fairchild, 121 Idaho 960, 829 P.2d 550 (Ct. App. 1992).

**—Of Possession.**

Where defendant was convicted in district court of possession of cocaine with intent to deliver although none of the drugs were found on defendant's person, the fact that defendant fled from police into the backyard where cocaine was then found by police in a trash can supports the contention that defendant disposed of the cocaine by placing it into the trash can and the jury could reasonably disbelieve defendant's story that he never saw the police and was chasing a puppy. Evidence of defendant's interaction with a drug distributor and the defendant's possession of marked currency provided to the distributor for purchase of cocaine from defendant further supports the prosecution's reasonable inference of defendant's knowledge and control of the substance as necessary to establish constructive possession of cocaine by defendant. State v. Gomez, 126 Idaho 700, 889 P.2d 729 (Ct. App. 1995).

Evidence was sufficient to sustain a conviction for possession of methamphetamine where a witness testified that defendant, a passenger, appeared nervous at the scene of an automobile accident, he reached deep into a garbage can, and soon thereafter a police officer found a methamphetamine pipe in the garbage can. State v. Stefani, 142 Idaho 698, 132 P.3d 455 (Ct. App. 2005).

**—Relevant.**

In prosecution for delivery of and trafficking in methamphetamine, evidence that defendant sent two money orders, both for substantial amounts, to the identical person in a city within the same week that two packages were sent from fictitious people and addresses and delivered to defendant through an airline from the same city made it more probable that defendant was engaged in trafficking methamphetamine and thus such evidence was relevant; however, the trial court's conclusion that the probative value of the evidence was not outweighed by its unfair prejudice was not an abuse of discretion, and such evidence was properly admitted. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

In prosecution for possessing a controlled substance with intent to deliver and failing to affix a controlled substance tax stamp where contents of bag containing an unidentified white powder were identified only to the extent that the bags did not contain controlled substances, no tests to determine the true chemical composition of the powders were requested or performed by either party and the bags could have contained powdered tattoo ink or epsom salts, no connection to defendant was established and such evidence was not relevant; however, admission of such evidence was harmless since it did not affect defendant's substantial rights as there was

other evidence sufficient to show that the premises and controlled substance found therein belonged to defendant. State v. Seitter, 127 Idaho 370, 900 P.2d 1381 (Ct. App. 1994), rev'd on other grounds, 127 Idaho 356, 900 P.2d 1367 (1995).

In trial of defendant convicted of delivery of a controlled substance, district court did not err in admitting evidence of prior drug transaction with undercover officer because it was relevant to the state's rebuttal of defendant's affirmative defense of entrapment and was relevant to prove defendant's motive or intent. State v. Canelo, 129 Idaho 386, 924 P.2d 1230 (Ct. App. 1996).

**—Searches and Seizures.**

An unconsented police entry into a residential unit, be it a house, apartment, or hotel or motel room, constitutes a search under the Fourth Amendment to the U.S. Constitution; even if the rental period had expired, this does not inevitably terminate the justified privacy expectation. Thus, the district court erred in not suppressing evidence of marijuana plants seized in a warrantless search. State v. Johnson, 108 Idaho 619, 701 P.2d 239 (Ct. App. 1985), aff'd, 110 Idaho 516, 716 P.2d 1288 (1986).

Officers may only conduct a search of an individual's home without first obtaining a search warrant where the search is incident to an arrest, in response to exigent circumstances, or where there is proper consent. A lessor who has granted the lessee exclusive possession over a certain area may not, during the period of the tenancy, give an effective consent to a police search of that area; this is so whether the arrangement involves the rental of a house, an apartment, a room in a rooming house, hotel or even a locker. Thus, the landlord's consent to a police search of the tenant's apartment was ineffective, and the evidence of marijuana obtained in such warrantless search should have been suppressed. State v. Johnson, 108 Idaho 619, 701 P.2d 239 (Ct. App. 1985), aff'd, 110 Idaho 516, 716 P.2d 1288 (1986).

The gross weight of the controlled substance seized was more consistent with a dealer amount than a user amount and drug paraphernalia necessary for redistribution would probably be present at the address to which the package containing the controlled substance was mailed; therefore, the officer's affidavit presented a substantial basis for the magistrate to conclude that probable cause was present to search defendant's residence for evidence of drug repackaging and records of sale. State v. Wilson, 120 Idaho 643, 818 P.2d 347 (Ct. App. 1991).

The warrant issued in this case covered only instrumentalities and evidence of drug trafficking and was not issued for the purpose of seizing the contents of the package ad-

dressed to defendant and delivered to his residence; therefore, because its execution was neither predicated upon the delivery of the package nor upon the occurrence of any other event, the warrant was not "anticipatory." *State v. Sholes*, 120 Idaho 639, 818 P.2d 343 (Ct. App. 1991).

The defendant's appeal from an Idaho Criminal Rule 11 conditional plea of guilty to possession of a controlled substance with intent to deliver in violation of this section was denied; the defendant was arrested for failure to maintain insurance, in violation of § 49-1229 and a subsequent search of his automobile uncovered cocaine and other drug paraphernalia; the defendant sought to suppress the evidence seized, contending that the search of his vehicle was an unconstitutional search and seizure and that the Idaho Constitution provided more protection than afforded by the Fourth Amendment of the U.S. Constitution; the trial court properly denied the suppression motion. *State v. Wheaton*, 121 Idaho 404, 825 P.2d 501 (1992).

Where police officers discovered cocaine and scales in the console of defendant's vehicle, after he was arrested for the misdemeanor charge of operating a motor vehicle without liability insurance, the court of appeals upheld the search and seizure of evidence as a search incident to arrest. *State v. Wheaton*, 121 Idaho 727, 827 P.2d 1174 (Ct. App. 1991).

As a casual visitor, defendant did not have a reasonable expectation of privacy in an apartment that police entered without a warrant; therefore, his Fourth Amendment right to be free from unreasonable searches and seizures was not violated, and the district court did not err in denying his motion to suppress. *State v. Vasquez*, 129 Idaho 129, 922 P.2d 426 (Ct. App. 1996).

In prosecution for possession of a controlled substance found in patrol car in which defendant was placed after his arrest on an outstanding warrant, defendant's right against illegal search and seizure were not violated where evidence showed that seizure of defendant did not occur when police officers first arrived at the residence and defendant came out in response of officer's commands as contended by defendant, but only after defendant was arrested upon an outstanding warrant discovered after an outstanding warrant check was made and defendant was placed in patrol car. *State v. Fuentes*, 129 Idaho 830, 933 P.2d 119 (Ct. App. 1997).

The factors to be considered by the magistrate in application for search warrant include the reliability of, and the basis of knowledge of, persons who have supplied information that is related by the affiant or witness. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

If a search is conducted pursuant to a warrant, the burden of proof is on the defen-

dant to show that the search was invalid. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

The affidavit for a search warrant of a law enforcement agent which does not specifically identify each source may, nonetheless, be sufficient to support probable cause if a reader could reasonably infer that the information came from other law enforcement personnel. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Since in application for search warrant a common sense reading of postal inspector's affidavit reasonably identified the sources of his information as other government officials carrying out investigatory or regulatory responsibilities, and since those sources were presumptively reliable, defendant's challenge to search warrant failed. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

In application for search warrant where, given a common sense interpretation federal agent's testimony indicated that her information came from the observations of state and federal law enforcement personnel and postal employees involved in the same investigation and nothing in the evidence presented contradicted the presumption that these sources were reliable, there was a substantial basis for determining that probable cause existed for issuing the search warrant. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Because the officer lawfully entered the bedroom to conduct a Type I protective sweep subsequent to defendant's arrest pursuant to the warrants, and upon entering the bedroom observed, in plain view, the contraband which was the basis of the criminal charges, the evidence was lawfully seized. *State v. Northover*, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

The officers' initial entry into the residence and subsequent search of the portable safe was pursuant to defendant's prior written acknowledgment and consent to the search of her residence in conjunction with her living with a felony probationer. *State v. Devore*, 134 Idaho 344, 2 P.3d 153 (Ct. App. 2000).

Suppression of evidence — a syringe taken from defendant's pocket — was denied where the officer was justified in stopping defendant for investigatory purposes and was justified in frisking defendant for weapons, and the officer did not exceed the scope of the frisk. *State v. Robertson*, 134 Idaho 180, 997 P.2d 641 (Ct. App. 2000).

Evidence police found when they searched trash cans set near the street that was used to get a search warrant was properly admitted, because there can be no reasonable expectation of privacy in items deposited in a public area, conveyed to a third-party for collection, and readily accessible to animals, children, scavengers, snoops, and other members of the

public. *State v. McCall*, 135 Idaho 885, 26 P.3d 1222 (2001).

Police officer had reasonable suspicion to stop defendant's vehicle after observing erratic speeds and traffic violations; evidence of drug manufacturing obtained during subsequent search of defendant's house was admissible since initial search was consensual and items were recovered by means of a search warrant. *State v. Slater*, 136 Idaho 293, 32 P.3d 685 (Ct. App. 2001).

#### **—Sufficient.**

Evidence provided a sufficient basis for the jury to infer that the defendant knew of methamphetamine under his seat in a car, had the power and intention to control the illegal drugs, and exhibited the requisite intent to deliver the same where the arresting officer observed the defendant look back at him as he approached the car and furtively reach under the seat, where the defendant initially lied about his identity, and where a subsequent search found drug paraphernalia, a cellular telephone, a ledger, cash and a pager. *State v. Blake*, 133 Idaho 237, 985 P.2d 117 (1999).

#### **—Unlawfully Obtained.**

Where evidence was seized as a result of an investigatory stop that became unreasonable due to the illegal detention of the driver, then the evidence was obtained unlawfully also as to the passengers, who had standing under *State v. Haworth*, 106 Idaho 405, 679 P.2d 1123 (1984), to challenge the reasonableness of the derivative detention resulting from the investigatory stop. *State v. Luna*, 126 Idaho 235, 880 P.2d 265 (Ct. App. 1994).

#### **Forfeiture.**

In light of recent precedent from the United States supreme court, § 37-2744 does not create forfeiture proceedings which are criminal in nature or which result in punishment for double jeopardy analysis; conviction for possession of a controlled substance with intent to deliver and forfeiture of pickup truck affirmed. *State v. McGough*, 129 Idaho 371, 924 P.2d 633 (Ct. App. 1996).

Because the U.S. supreme court recently determined that civil forfeitures in general, and specifically in cases involving money laundering and drug statutes, do not constitute "punishment" for purposes of the Double Jeopardy Clause, there was no double jeopardy attached to defendant's convictions and sentences for delivery of controlled substance, money laundering, and failure to pay income tax and the prior forfeiture of his property under § 37-2744. *State v. Ross*, 129 Idaho 380, 924 P.2d 1224 (1996).

#### **General Intent.**

The possession of a controlled substance in violation of this section only requires a gen-

eral intent in that it only requires knowledge that one is in possession of the substance. *State v. Groce*, 133 Idaho 144, 983 P.2d 217 (Ct. App. 1999).

#### **Informants.**

Where the record contained no information relating to an informant's past reliability, however, where the informant's detailed account of defendant's marijuana growing operation supported the informant's present credibility, where the informant accurately described defendant's physical appearance, house, car, length of time lived at the house, and the esoteric fact he was using a false name for purpose of his utility bills, and where each of these facts were independently corroborated by the investigating officer, the independent corroboration of these facts provided a substantial basis for believing the informant's statements were true. *State v. McAndrew*, 118 Idaho 132, 795 P.2d 26 (Ct. App. 1990).

The magistrate at the preliminary hearing determined, contrary to defendant's argument, that the informant was not a participant in the commission of the crime of possession with intent to deliver; rather, the informant's activities confirmed the presence of controlled substances in the defendant's trailer, upon which the magistrate based his assessment that there was probable cause to have defendant answer for the crime; therefore, the magistrate and the district judge did not abuse their discretion in denying defendant's requests for disclosure of the informant's identity in pre-trial proceedings. *State v. Fairchild*, 121 Idaho 960, 829 P.2d 550 (Ct. App. 1992).

In prosecution for delivery and trafficking in methamphetamine in violation of § 38-2732B and this section, where defendant failed to articulate any basis for her assertion that the in camera hearing was insufficient to protect her rights and also failed to demonstrate how the informant's identity would have presented her with necessary information that the in camera hearing did not, trial court did not err in refusing to disclose the informant's identity. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Defendant's conviction of possession of a controlled substance in violation of paragraph (c)(1) was appropriate where an officer possessed a reasonably articulable suspicion for defendant's detention. The officers possessed the requisite suspicion that, at the least, defendant was acting in violation of this section, given her presence in the house that two neighbors had told the police that they suspected was the site of drug activities and both neighbors had independently alerted authorities of their suspicions regarding the drug activity. *State v. Swindle*, 148 Idaho 61, 218 P.3d 790 (Ct. App. 2009).

**Information.**

Where an information charged defendants with conspiracy to manufacture a controlled substance in violation of this section, and which stated as the basis for such that they did so "by conspiring with each other to manufacture a controlled substance, to wit: Methamphetamine, a Schedule II(D) Controlled Substance by them, the said defendants, obtaining and possessing glassware and other lab equipment for the manufacture of Methamphetamine and chemicals necessary for said manufacture," although the phrasing of the information could have been improved, it adequately notified defendants of the criminal acts with which they were charged. State v. Munhall, 118 Idaho 602, 798 P.2d 61 (Ct. App. 1990).

The information included all of the elements of the offense and sufficiently informed defendant of those acts for which he was accused, the pleading identified the substance that defendant was alleged to have possessed and the date and place of possession, and, in the absence of any suggestion in the information that the state was charging defendant with possession of only a portion of the cocaine found on that date, defendant was on notice that he must be prepared to present a defense regarding all of the cocaine so found. State v. Holcomb, 128 Idaho 296, 912 P.2d 664 (Ct. App. 1995).

Charging information was not jurisdictionally deficient for failing to specifically allege defendant's possession of methamphetamine was "knowing," as "knowing" possession was necessarily implied by the allegation of "unlawful" possession contained in the information. State v. Davis, 144 Idaho 276, 159 P.3d 913 (Ct. App. 2007).

**Instructions.**

Instructions failed to accurately and fairly represent the law and misled the jury where that jury could have found that the defendant had positive knowledge of the drugs in question, but also could have concluded that he should have known that the substances were methamphetamine and cocaine. State v. Blake, 133 Idaho 237, 985 P.2d 117 (1999).

Whether defendant knew or believed that he possessed methamphetamine, such possession was the result of a deliberate and conscious act; thus, a jury instruction which instructed the jury to find defendant guilty if the state proved that he possessed methamphetamine and he knew or thought it was methamphetamine separated innocent from criminal conduct, was a correct statement of the law and did not mislead the jury. State v. Hopper, 142 Idaho 512, 129 P.3d 1261 (Ct. App. 2005).

**Intent.**

Evidence of defendant's prior drug use was admissible because it was not presented to

show his character or to show that he acted in conformity with a particular trait of character, rather, the challenged evidence was relevant to prove the specific intent element of the charged offense of possession of drug paraphernalia. State v. Williams, 134 Idaho 590, 6 P.3d 840 (Ct. App. 2000).

Petitioner raised a genuine issue of material fact as to whether he was aware of the intent element of the charge of possession of a controlled substance prior to pleading guilty to that charge where he claimed that the controlled substance was placed in his wallet by his girlfriend without his knowledge, he repeatedly asserted in his postconviction filings that he was not made aware of the intent element by the states, the district court, or his attorney, and even the presentence investigation report did not refute the petitioner's allegation that he was unaware of the intent element. Martinez v. State, 143 Idaho 789, 152 P.3d 1237 (Ct. App. 2007).

**Intent to Deliver.**

Where drug enforcement administration expert in narcotics testified that an individual addict would not possess fifteen grams of heroin for personal use and that packaging and purity of the heroin seized at defendant's residence were consistent with sales activity and inconsistent with mere personal use, the evidence was sufficient to uphold conviction for "intent to deliver." State v. Gomez, 101 Idaho 802, 623 P.2d 110 (1980), cert. denied, 454 U.S. 963, 102 S. Ct. 503, 70 L. Ed. 2d 378 (1981).

Evidence of the quantity and variety of controlled substances found will not, by itself, support an inference of intent to deliver a controlled substance under this section. State v. O'Campo, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where substantial quantities and values of a prohibited substance are combined with evidence of suspicious activities, money, or transaction records, the inference of intent to deliver may be sustained. State v. O'Campo, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

The existence of drug paraphernalia, even without packaging material, may be sufficient to support an inference of an intent to deliver. State v. O'Campo, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where the quantity and economic value of the controlled substances suggest personal use, the mere existence of packaging material will not provide an adequate basis to infer an intent to deliver the controlled substance as the packaging may be consistent with the defendant's purchase of the substances for personal use. State v. O'Campo, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

Where the quantities and values of the controlled substances in question are substantial, and the packaging material is cou-

pled with paraphernalia, there is an adequate basis to infer an intent to deliver. State v. O'Campo, 103 Idaho 62, 644 P.2d 985 (Ct. App. 1982).

#### **Judgment.**

Where verdicts were returned finding defendant guilty of conspiracy to deliver and delivery of cocaine and also possession of controlled substances, an offense of which defendant was not separately charged, but judgments were entered only on the conspiracy and delivery charges, because there was no showing of prejudice and no attack was made on the sufficiency of the evidence of support the judgments entered, there was no error. State v. McNeely, 104 Idaho 849, 664 P.2d 277 (Ct. App. 1983).

#### **Jury Instruction.**

Where jury requested that judge define "control" as used in instruction related to possession of marijuana under this section and judge, after unsuccessfully trying to locate defense counsel, conferred with prosecuting attorney and typed out definition for jury, it was harmless error for judge to so act, despite fact that he violated procedure under § 19-2204, since the information filed against defendant contained the correct definition. State v. Randolph, 102 Idaho 153, 627 P.2d 782 (1981).

In a prosecution for delivery of cocaine based entirely on circumstantial evidence, it was reversible error to refuse to give the instruction that a defendant cannot be convicted unless the proved circumstances are not only consistent with guilt but cannot not be reconciled with any other rational conclusion, and that if the evidence is susceptible of two reasonable interpretations, one pointing to guilt and the other to innocence, the jury must adopt the interpretation of innocence. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

In prosecution for delivery of cocaine, it was not error for the court to refuse a requested instruction dealing with drug paraphernalia, as the defendant was not charged with a paraphernalia violation. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

The failure to give the requested instruction advising the jury to examine a paid informant's testimony with greater caution than the testimony of ordinary witnesses was at most harmless error, where the informant's testimony was not the sole or primary evidence against the defendant. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

Where, in prosecution for delivery of cocaine, the defendant never claimed to have delivered any cocaine, the giving of the instruction that the state did not have the

burden of proving that the defendant did not have any authority under law to deliver the controlled substances was harmless because the question of the defendant's authority to deliver was not at issue in the trial. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

Where, in prosecution for delivery of cocaine, there was substantial evidence presented to show the state's theory of the defendant's involvement in the crime, that evidence fully supported an aiding and abetting instruction. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

Where, in prosecution for delivery of cocaine, the testimony of the defendant's alibi witness established the defendant's presence for only part of the evening, the district court did not err in giving the instruction that allowed the jury to make a reasonable doubt determination of whether the defendant was involved in the crime, nor did the court err in refusing to give the defendant's requested alibi instruction. State v. Nelson, 112 Idaho 245, 731 P.2d 788 (Ct. App. 1986), aff'd, 114 Idaho 292, 756 P.2d 409 (1988).

The instruction requested by defendant on possession of paraphernalia only served to suggest a crime that could have been, but was not, directly or indirectly charged. Therefore, the court was not required to give any instruction about the crime of possession of paraphernalia. State v. Kodesh, 122 Idaho 756, 838 P.2d 885 (Ct. App. 1992).

The defense of necessity could not logically have applied to the charged offense of which defendant was found guilty, possession of marijuana with intent to deliver; thus any error in the denial of her requested jury instruction was harmless. State v. Tadlock, 136 Idaho 413, 34 P.3d 1096 (Ct. App. 2001).

In a prosecution for possession of a controlled substance, the state need only prove the defendant's knowledge that he had a controlled substance in his possession and need not prove that the defendant was aware of the precise type of controlled substance. State v. Stefani, 142 Idaho 698, 132 P.3d 455 (Ct. App. 2005).

In prosecution for possession of amphetamine, defendant was entitled to a new trial due to conflict between oral and written instructions. In light of defense counsel's focus in closing argument around incorrect standard provided in oral instructions, defendant was prejudiced by correct, but looser standard provided in written instructions. State v. Amelia, 144 Idaho 332, 160 P.3d 771 (Ct. App. 2007).

#### **Knock and Announce.**

District court erred in denying suppression motion of defendant charged with possession

of a controlled substance with intent to deliver; the five seconds the police waited after a knock and announce was not a reasonable length of time to allow an occupant of defendant's home to answer the door in the early morning, when no exigency existed or arose and the alleged volume of drugs in the home was itself insufficient to create reasonable suspicion of an exigency allowing the police to almost immediately enter the home after knocking and announcing. *State v. Ramos*, 142 Idaho 628, 130 P.3d 1166 (Ct. App. 2005).

#### **Knowledge.**

The mens rea element of the offense of possession of a controlled substance is knowledge of possession, not knowledge that the substance possessed is a controlled substance. *State v. Fox*, 124 Idaho 924, 866 P.2d 181 (1993).

Where defendant claimed that he did not know the nature of the residue in the vial that he possessed, not that he did not know the illegal nature of the substance he possessed; testimony of third party was relevant to the issue of knowledge of what the substance was. *State v. Lamphere*, 130 Idaho 630, 945 P.2d 1 (1997).

To be convicted under this section, an individual need not know that the substance possessed is a controlled substance. *State v. Blake*, 133 Idaho 237, 985 P.2d 117 (1999).

Defendant's mistaken belief that the cotton ball in his possession no longer contained any methamphetamine residue did not absolve him of guilt where he earlier knew of and controlled that same methamphetamine residue as part of a larger quantity that he was using. *State v. Armstrong*, 142 Idaho 62, 122 P.3d 321 (Ct. App. 2005).

#### **Manufacturing and Possession.**

This section treats manufacturing as a criminal act distinguishable from delivery or possession with intent to deliver. This is a constitutionally permissible legislative choice. *State v. Randles*, 115 Idaho 611, 768 P.2d 1344 (Ct. App. 1989), aff'd in part, 117 Idaho 344, 787 P.2d 1152 (1990).

The facts establishing the statutory elements of manufacturing a controlled substance are different from the facts required to prove the elements of possessing a controlled substance with intent to deliver; manufacturing is completed when a person produces or otherwise prepares the controlled substance. On the other hand, possession with intent to deliver does not require any production, processing or synthesizing of a drug; it is complete upon actual or constructive possession coupled with the intent to transfer, or attempt to transfer, the substance to another person. *State v. Randles*, 115 Idaho 611, 768 P.2d 1344 (Ct. App. 1989), aff'd in part, 117 Idaho 344, 787 P.2d 1152 (1990).

Growing marijuana plants in a greenhouse was not sufficient to sustain a conviction of

manufacture of marijuana against the defendant. *State v. Randles*, 117 Idaho 344, 787 P.2d 1152 (1990).

The facts establishing the statutory elements of manufacturing a controlled substance are different from the facts required to prove the elements of possessing a controlled substance with intent to deliver, and separate convictions for these offenses did not violate state and federal constitutional protection against double jeopardy. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

In prosecution for delivery of a controlled substance, circumstantial evidence that police informant was quite familiar and had a lot of experience with methamphetamine, that he had purchased the drug from defendant on several occasions, that it was packaged in the same manner on such occasions as it was during the transaction in question, that police officer who was listening to informant's and defendant's conversation over a listening device confirmed informant's description of the transaction, was sufficient evidence from which jury could find that the substance defendant delivered to informant was methamphetamine. *State v. Mitchell*, 130 Idaho 134, 937 P.2d 960 (Ct. App. 1997).

#### **Mere Presence.**

This section precludes the interpretation that a person violates the statute simply by his presence at a place where controlled substances are sold. *State v. Crabb*, 107 Idaho 298, 688 P.2d 1203 (Ct. App. 1984).

#### **Necessity Defense.**

Where defendant picked up a package at the airport that the police knew contained methamphetamine, and where police officer, who did not tell defendant that he was a police officer, told defendant that he knew what was inside the package and would call police unless she gave him a "pinch" of it, the delivery of the substance to the police officer was not the result of necessity; defendant's fear of being held accountable for a crime she had committed could not serve to justify the commission of another offense. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

#### **One Act as Multiple Crimes.**

This section permits one act to constitute several crimes and a woman involved in the sale of marijuana might be tried for conspiracy, possession of more than three ounces, and frequenting a place where marijuana was found. *State v. Ramsey*, 99 Idaho 1, 576 P.2d 572 (1978).

Although it is possible for a person to violate both section 37-2732B and this section, section 37-2732B requires the amount of cocaine involved to be at least twenty-eight grams, while this section contains no such quantity requirements. *State v. Payan*, 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998).

**Personal use exception.**

The trial court erred in holding that the growing of marijuana was within the personal use exception of the manufacturing statutes, §§ 37-2737A, 37-2701 and this section. State v. Griffith, 127 Idaho 8, 896 P.2d 334 (1995).

**Possession.**

Where, although defendant charged with certain crimes under this section did not have actual possession of the drugs in question, he did have constructive possession, and this was established by evidence that the defendant knew of the drugs and had equal control with co-defendant over the premises in which they were found. State v. Hickman, 119 Idaho 366, 806 P.2d 959 (Ct. App. 1991).

In order to establish possession of a controlled substance, a defendant need not have actual physical possession of the substance; the state need only prove that the defendant has such dominion and control over the substance to establish constructive possession. What is crucial to the state's proof is a sufficient showing of a nexus between the accused and the controlled substance. Knowledge of the existence of controlled substances may be inferred through circumstances. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Where defendant was convicted in district court of possession of marijuana with intent to deliver under this section, the fact that defendant received marijuana in the mail in a package addressed to him at a location where he was known to sometimes reside was not sufficient to establish constructive possession of marijuana because it did not warrant an inference beyond a reasonable doubt that the defendant possessed the drugs knowingly. State v. Gomez, 126 Idaho 700, 889 P.2d 729 (Ct. App. 1995).

In prosecution for possessing a controlled substance, methamphetamine, with intent to deliver and failing to affix a controlled substance tax stamp, where friends of defendant testified that he personally used the drug, and there was evidence that the only place that the drug was found in the clubhouse was in the closet filled with defendant's belongings, that defendant attempted to drive away when he arrived at the clubhouse and saw that a search was being conducted, that he was an officer of the club and frequently approached police as the contact person for the group, that he often resided at the clubhouse and received personal mail there, that he controlled access to the bedroom and kept a list of personal effects there, that he protected the room with firearms, that small bags similar to those used to package the drug were found in the room, that the drug was found on a beam scale in an amount usually kept for personal use but was consistent for an amount intended for sale, taken together these facts

were sufficient to support the inferences that defendant knew of the methamphetamine and exercised dominion and control over it by occupying and controlling the room. State v. Seitter, 127 Idaho 370, 900 P.2d 1381 (Ct. App. 1994), rev'd on other grounds, 127 Idaho 356, 900 P.2d 1367 (1995).

The magistrate's finding of probable cause was supported by the evidence where cocaine was found both scattered across the seat and floor of defendant's pickup and in a bindle lying near his feet and the paper used to make the bindle of cocaine was torn from a bank deposit slip bearing defendant's name and lying under the floor mat of the pickup. From this evidence, a reasonable inference could be drawn that defendant had physically possessed the cocaine and had either dropped the bindle himself or had previously transferred the bindle to his companion. State v. Holcomb, 128 Idaho 296, 912 P.2d 664 (Ct. App. 1995).

Where a police officer found a glass cylinder with a teardrop bottom containing brown residue in defendant's coat pocket, the evidence was sufficient to support his conviction for possession of methamphetamine. His criminal sentence of seven years with five years determinate was not excessive. State v. Dixon, 140 Idaho 301, 92 P.3d 551 (Ct. App. 2004).

**Procuring Agent Theory.**

The "procuring agent" theory has no application to a statutory scheme like Idaho's, where the prohibited act is delivery rather than sale. State v. Sharp, 104 Idaho 691, 662 P.2d 1135 (1983).

The definition of the word "delivery" in § 32-2701 makes it clear that a defendant need not have been an agent of another to be guilty under this section. State v. Sharp, 104 Idaho 691, 662 P.2d 1135 (1983).

**Quantity.**

Although the legislature did not proscribe the possession of "any quantity" of cocaine as it did for methamphetamine, its classification of cocaine as a Schedule II controlled substance and its limited availability demonstrate that the legislature intended the possession of even trace or residual quantities of cocaine to fall within the scope of this section. State v. Groce, 133 Idaho 144, 983 P.2d 217 (Ct. App. 1999).

Because the language of the controlled substances statute is plain and unambiguous, even a trace amount of the substance will satisfy the requirement of the statute, and a refusal to adopt the usable-quantity rule does not lead to a result which is palpably absurd. State v. Rhode, 133 Idaho 459, 988 P.2d 685 (1999).

**Question of Law.**

The question whether a substance is designated in this chapter as a controlled substance is a question of law for the court, and

not the jury, to decide. *State v. Hobbs*, 101 Idaho 262, 611 P.2d 1047 (1980).

It is not an abuse of judicial discretion for a judge to impose a sentence which is well within the statutory limits. *State v. Miles*, 97 Idaho 396, 545 P.2d 484 (1976), overruled on other grounds, *State v. Bottelson*, 102 Idaho 90, 625 P.2d 1093 (1981).

The district court did not abuse its discretion in imposing the indeterminate sentence of not more than three years for delivery of marijuana, where defendant had had numerous brushes with the law prior to the arrest which led to conviction, and although of a relatively minor nature, these gave support to the trial court's decision to deny the defendant probation at the time of sentencing. *State v. Powers*, 100 Idaho 290, 596 P.2d 802 (1979).

There was no abuse of discretion in defendant's sentence of five years' imprisonment, to run concurrently with a three-year sentence on another charge, in view of fact that the maximum term authorized for delivery of a controlled substance was life imprisonment and a \$25,000 fine, and in view of the presentence investigation report's observation that defendant had previously abused the terms of a parole arrangement. *State v. Powers*, 100 Idaho 614, 603 P.2d 569 (1979).

#### **Restitution.**

Defendant confused the provisions of § 19-5304(1) — requiring that a court order a defendant to pay victims for any economic losses directly resulting from the criminal conduct for which the defendant is convicted — with the provisions of subsection (k) of this section — which authorizes the courts to "order restitution for costs incurred by law enforcement agencies in investigating the violation" for which the defendant is convicted; in this case the district court expressly ordered restitution pursuant to the latter statute and thus, contrary to defendant's claim, the district court had statutory authority, and hence jurisdiction, to order him to pay restitution to the law enforcement agencies. *State v. Hernandez*, 121 Idaho 114, 822 P.2d 1011 (Ct. App. 1991).

An order for restitution of costs incurred by law enforcement agencies in investigation is a direct consequence of entering a guilty plea and the sentencing court may not impose restitution upon a defendant who pleads guilty, unless defendant is advised of that possibility prior to entering the plea. *State v. Banuelos*, 124 Idaho 569, 861 P.2d 1234 (Ct. App. 1993), cert. denied, 510 U.S. 1098, 114 S. Ct. 936, 127 L. Ed. 2d 227 (1994).

Trial court abused its discretion in ordering a defendant, convicted of racketeering for his participation in growing and processing marijuana, to pay restitution to the county for costs of investigating and prosecuting the

action against him; as it existed during the period relevant to defendant's appeal, this section was limited to a conviction of felony violation under this chapter. *State v. Hansen*, 125 Idaho 927, 877 P.2d 898 (1994) (see 2004 amendment authorizing restitution in misdemeanor cases).

Statutory language of paragraph (k) is broad enough to encompass prosecutorial expenses associated with drug court operations incurred before a judgment of conviction has been entered against the defendant. *State v. McCool*, 139 Idaho 808, 87 P.3d 295 (Ct. App. 2003).

#### **Searches.**

Search of defendant's car was proper and supported by probable cause where drug-detection dog used to sniff the exterior indicated the presence of a controlled substance and defendant's initial detention was proper and did not constitute an arrest without probable cause where, after a proper initial stop due to defendant's excessive speed, officer acquired information contrary to what defendant had been telling him and became suspicious of objects in the back seat of defendant's car. *State v. Martinez*, 129 Idaho 426, 925 P.2d 1125 (Ct. App. 1996).

In a case where defendant was convicted of possession of methamphetamine, defendant's motion to suppress was properly denied as he failed to demonstrate that his arrest was unlawfully made in violation of the restrictions on the warrants for his arrest in a public place or in violation of the Fourth Amendment. *State v. Shellenbarger*, 140 Idaho 185, 90 P.3d 935 (Ct. App. 2004).

#### **—Consent.**

The reasonable belief that the third person possessed authority, as an occupant, to consent to a search of the house was sufficient to validate the search. *State v. Misner*, 135 Idaho 277, 16 P.3d 953 (Ct. App. 2000).

#### **—Drug Detection Dogs.**

The officer's brief questioning and his use of the drug detection dog to sniff the exterior of defendant's truck did not violate defendant's Fourth Amendment rights. *State v. Parkinson*, 135 Idaho 357, 17 P.3d 301 (Ct. App. 2000).

#### **—Exigent Circumstances.**

The circumstances known to officer immediately before she entered defendant's apartment — a violent fight in progress with one participant already having been injured, the presence of a small child who could be victimized, and the consequent risk of bodily harm to one or more occupants of the apartment if the police did not intervene — constituted an exigent circumstance that justified officer's entry for purpose of preventing further violence and rendered discovery of

methamphetamine lawful. *State v. Sailas*, 129 Idaho 432, 925 P.2d 1131 (Ct. App. 1996).

Where defendant had just been found unconscious under circumstances suggesting that he was under the influence of drugs, the fact that he was declining treatment did not make unreasonable the paramedics' belief that he required further attention; therefore, the exigent circumstance had not yet dissipated when police officers entered the motel room while defendant was still on the floor with paramedics continuing to evaluate or treat him, because law enforcement officers may enter premises to seize contraband that was found in plain view by firefighters or other emergency personnel if the exigency is continuing and the emergency personnel are still lawfully present. *State v. Bower*, 135 Idaho 554, 21 P.3d 491 (Ct. App. 2001).

#### **—Improper.**

Where there was no evidence to suggest that defendant was uncooperative, that he had a propensity for violence, or that there were suspicious bulges in his clothing, nor did the officer who frisked defendant testify that he had any information prior to the frisk to indicate that defendant was armed, based upon the totality of the circumstances known to the officers on the scene, a reasonably prudent person would have no cause to believe that defendant was armed and dangerous; therefore, the district court erred in determining that the officers were justified in frisking defendant. *State v. Kerley*, 134 Idaho 870, 11 P.3d 489 (Ct. App. 2000).

Because there was no clear request for consent to search defendant's home, and it could not be inferred that defendant consented to the officers conducting a search to find items that were not in plain view, the search was unreasonable and defendant's motion to suppress should have been granted; the court thus vacated defendant's conviction of possession of methamphetamine. *State v. Lafferty*, 139 Idaho 336, 79 P.3d 157 (Ct. App. 2003).

Defendant's conviction for possession of a controlled substance was improper where the evidence found in his wallet should have been suppressed; although a drug dog's alert to defendant's vehicle, and subsequent failure of a search of that vehicle to disclose contraband, might have caused the officers' suspicions to be aroused, the officers could not lawfully arrest him on the basis of their suspicions and could not reasonably conclude that defendant was in possession of drugs. *State v. Gibson*, 141 Idaho 277, 108 P.3d 424 (Ct. App. 2005).

Where a controlled drug transaction took place at one location in a mobile home park, but a search of that location failed to find any marijuana, and the officer determined that the suspect lived in an adjoining space and

obtained a search warrant for that space based solely on the residence of the suspect, the search of the adjoining space was invalid for lack of a nexus between the place to be searched and the item to be seized, and the evidence should have been suppressed. *State v. Belden*, 148 Idaho 277, 220 P.3d 1096 (Ct. App. 2009).

#### **—Pat-down.**

Where a police officer intentionally removed all items from a suspect's pocket, he acted unreasonably and not in a minimally intrusive fashion, and exceeded the scope of a pat-down search for weapons. The baggy of methamphetamine that the officer removed from defendant's pocket was, therefore, the fruit of an unreasonable search and should have been suppressed. *State v. Watson*, 143 Idaho 840, 153 P.3d 1186 (Ct. App. 2007).

Based on a response to a possible burglary, an officer was justified in conducting a *Terry* frisk that led the officer to the lawful discovery of contraband cigarettes in juvenile defendant's pocket. Upon defendant's admission that he also possessed marijuana, the officer was permitted to reach into defendant's pocket and remove the marijuana. *State v. Doe (In re Doe)*, 145 Idaho 980, 188 P.3d 922 (Ct. App. 2008).

During a traffic stop of a vehicle driven by defendant, a police officer found a number of unused syringes in his pocket and a small amount of methamphetamine, another syringe, and other paraphernalia in the vehicle; defendant was not permitted to suppress the evidence as the frisk was justified by officer safety. *State v. Martin*, 146 Idaho 357, 195 P.3d 716 (Ct. App. 2008).

#### **—Private.**

Where airport narcotics police had given business cards and profile sheets to airline employees and had given them awards when they provided the police with packages containing controlled substances, airline employee who conducted search of package containing a substance which was later determined to be a controlled substance, who stated that she never saw the profile sheets, that she did not receive any training from the police, that she did not expect to receive a payment when she opened the package, but was simply doing her duty as a citizen, was not an agent of the police, and her search was a private search; thus, defendant's Fourth Amendment rights were not impaired. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

#### **—Probable Cause Standard.**

The stop was valid because the facts as found by the district court provided objectively reasonable grounds to support the officer's suspicion of criminal activity, where the officer responded at night to a reported bur-

glar alarm at a building that the officer was aware had been burglarized and vandalized in the recent past, and defendant was the only person at the scene of the reported alarm other than the officer. *State v. Robertson*, 134 Idaho 180, 997 P.2d 641 (Ct. App. 2000).

Under the 4th Amendment of the U.S. Constitution and Idaho Const., Art. I, § 17, a search warrant may be issued only upon a finding of probable cause to believe that contraband or evidence of a crime will be found in the place to be searched. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

To determine whether probable cause exists in order to issue a search warrant, a magistrate must employ the totality of circumstances standard set forth in *Illinois v. Gates*, 402 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), and make a practical, common sense decision whether, given all the circumstances set forth in the affidavit, including veracity and basis of knowledge of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

A magistrate's evaluation of probable cause is based on facts set forth in an affidavit or any sworn, recorded testimony given in support of the search warrant. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

The affidavit in support of the request for a search warrant contained reliable, nonstale information that an informant had observed growing, harvested, drying and stored marijuana, thus supplying probable cause to the magistrate that a crime was being committed on the property to be searched. *State v. Carlson*, 134 Idaho 471, 4 P.3d 1122 (Ct. App. 2000).

#### **—Proper.**

Since the discovery of a vial of a controlled substance and its seizure were the result of defendant's voluntary request for the officer to retrieve a cigarette from defendant's pocket, the search and seizure did not implicate the fourth amendment of the constitution and suppression was not necessary. *State v. DuValt*, 131 Idaho 550, 961 P.2d 641 (1998).

Motion to suppress the evidence was denied where the officer had two warrants for defendant's arrest and defendant failed to prove that the police officer's actions of entering the curtilage and looking into the lighted basement window were unreasonable. *State v. Northover*, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

Where there were specific and articulable facts and inferences which reasonably warranted a frisk for weapons, and where, during the search for weapons, the defendant removed a container of amphetamines from his pocket and threw it away from his person, defendant's voluntary abandonment of the

container was not tainted by the frisk and its subsequent entry into evidence was proper. *State v. Hughes*, 134 Idaho 811, 10 P.3d 760 (Ct. App. 2000).

It is not a constitutional violation for an officer to exercise his discretion to check to see if the vehicle is stolen if the license plate has been cancelled, revoked, suspended, or altered; therefore, opening the door of the vehicle to check the vehicle identification number did not rise to the level of a constitutionally prohibited search, and the officer was in a place where he had a lawful right to be when he observed the contraband. *State v. Geissler*, 134 Idaho 902, 11 P.3d 1120 (Ct. App. 2000).

#### **—Protective Sweep.**

Because the bedroom searched by the officer was immediately adjoining the place of defendant's arrest, the officer could, as a precautionary matter and without probable cause or reasonable suspicion, enter the bedroom and perform a Type I *Buie* protective sweep (*Maryland v. Buie*, 494 U.S. 325, 110 S. Ct. 1093, 108 L. Ed. 2d 276 (1990)). *State v. Northover*, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

#### **—Review.**

Where, while one officer was applying for warrant, other officers entered defendant's home without warrant and seized drugs defendant informed them about after they told him his pregnant wife could be arrested if drugs were found in common areas, since appellate court can only review those facts which were before the judge when he issued search warrant, and since appellate court was not provided with tape recording or transcript of the oral affidavit of officer obtaining warrant, court could not review whether the information supplied in support of the warrant, exclusive of any alleged reference to illegally obtained information, was sufficient to find probable cause to issue the warrant. *State v. Soto*, 127 Idaho 324, 900 P.2d 800 (Ct. App. 1995).

When probable cause to issue a search warrant is questioned on appeal, the reviewing court's function is to ensure that the magistrate had a substantial basis for concluding that probable cause existed. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Affidavits for search warrants should not be reviewed and tested in a hypertechnical manner; rather such affidavits must be tested and interpreted by both the magistrate and reviewing appellate court in a common sense and realistic fashion. *State v. Wilson*, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

Issuance of search warrant based solely on affidavit signed by postal inspector was sufficient to support a search warrant where affidavit stated that U.S. Postal Inspection personnel intercepted the package which

appeared suspicious, described the characteristics of the parcel and its mailing label, and similar characteristics of previous mailing to defendant's address, stated that a check with postal sources at the post office where the mailing originated disclosed that the return address was fictitious, and described the training and experience the police department's drug-sniffing dog that was used in the investigation and said that the dog alerted to the suspect parcel. State v. Wilson, 130 Idaho 213, 938 P.2d 1251 (Ct. App. 1997).

#### —Warrantless.

Warrantless search of a defendant's vehicle was valid where police officer had made a lawful custodial arrest of the defendant as she attempted to back the vehicle out of its parking spot and such search was conducted as a result of such arrest. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

It was error to deny a motion to suppress evidence of drugs under this section, and drug paraphernalia under § 37-2734A(1), found in belongings of car passengers when driver was stopped for speeding and vehicle search was a result of officer's unreasonable extension of the traffic stop and its inherent detention. State v. Gutierrez, 137 Idaho 647, 51 P.3d 461 (Ct. App. 2002).

In prosecution for possession and trafficking of methamphetamine, trial court erred in denying defendants motion to suppress evidence obtained as a result of police officer's entry, along with firefighters, into defendant's garage after a fire had been put out. There was no exigency that would allow police to follow emergency personnel into the garage without a search warrant, because the firefighters did not find any contraband or evidence of a crime while investigating the fire's cause and they did not request the assistance of a police officer. State v. Bunting, 142 Idaho 908, 136 P.3d 379 (Ct. App. 2006).

While police officer's initial detention of defendant was without reasonable suspicion, it ended when defendant jumped up from picnic table where officer was questioning him and ran. Thus, methamphetamine dropped by defendant when he was tackled was not suppressible under the fruit of the poisonous tree theory. Had defendant remained at table, however, evidence would have been suppressible. State v. Zuniga, 143 Idaho 431, 146 P.3d 697 (Ct. App. 2006).

Where police officers had observed defendant smoking a marijuana cigarette, their statement that defendant would be subject to arrest if he did not turn over what drugs he had did not render defendant's subsequent consent to search his truck involuntary, as it merely informed defendant of their intention to do something that was within their authority based on the circumstances. State v. Garcia, 143 Idaho 774, 152 P.3d 645 (Ct. App. 2006).

#### Sentencing.

Where the sentence was well within the limits set by the legislature for the punishment of the crime of selling heroin, the district court did not abuse its discretion in sentencing defendant to two years in prison although there was a strong showing of rehabilitation made in his favor. State v. Ogata, 95 Idaho 309, 508 P.2d 141 (1973).

Since the maximum sentence for violation of this section is 15 years [now life] and/or a \$25,000 fine, a sentence of 3 years in prison was not an abuse of discretion. State v. O'Bryan, 96 Idaho 548, 531 P.2d 1193 (1975).

It was not an abuse of discretion for the trial court in a heroin delivery case to sentence the defendant to an indeterminate period not to exceed eight years pursuant to this section, despite the fact that there was evidence in the record to support mitigation of the punishment, since the record also contained evidence that the defendant was extensively and intentionally involved in the trafficking of heroin and that he was selling extremely pure heroin, which posed the threat of death to the unwary. State v. Gonzales, 102 Idaho 701, 638 P.2d 1390 (1981).

Where the defendant pled guilty to possession with intent to deliver a nonnarcotic drug or substance and the record adequately demonstrated that, prior to sentencing the defendant to the maximum prison sentence permissible, the trial judge closely examined the presentence report, considered six letters submitted on defendant's behalf, the facts and circumstances of this offense, the defendant's prior record, the defendant's previous actions and character, rehabilitation prospects, feasibility of probation, and the interest of society, the trial judge did not clearly abuse his discretion. State v. Couch, 103 Idaho 496, 650 P.2d 638 (1982).

Where defendant was given maximum sentences of five years for offenses of drunk driving and marijuana possession and was not given any reduction for presentence confinement, the term of imprisonment imposed exceeded the statutory maximum. Law v. Rasmussen, 104 Idaho 455, 660 P.2d 67 (1983).

Punishment of three years probation, 45 days in jail and \$1,000 fine was not grossly disproportionate to offense of possession with intent to manufacture, considering the amount of marijuana and paraphernalia seized, nor was it clearly arbitrary and shocking to the sense of justice. State v. Kelly, 106 Idaho 268, 678 P.2d 60 (Ct. App.), cert. denied, 469 U.S. 918, 105 S. Ct. 296, 83 L. Ed. 2d 231 (1984).

Since former § 18-301 prohibited the trial court from convicting and sentencing the defendant for both conspiracy to deliver a controlled substance and aiding and abetting the

delivery arising from the defendant's continuous course of conduct, the appellate court chose to vacate the delivery conviction and affirm the conspiracy conviction based upon a policy of deterrence arising from enforcement of the crime of conspiracy. *State v. Gallatin*, 106 Idaho 564, 682 P.2d 105 (Ct. App. 1984).

Where defendant was convicted of conspiracy to violate the controlled substance law by selling heroin, district court did not abuse its discretion in sentencing defendant to an indeterminate 15-year term, for heroin is a schedule I controlled substance, and is a "narcotic drug," and the maximum penalty for the manufacture, delivery, or possession with intent to manufacture or deliver a schedule I narcotic drug is life imprisonment, a \$25,000 fine, or both and defendant's sentence was well within the statutory maximum. *State v. Mata*, 107 Idaho 863, 693 P.2d 1065 (Ct. App. 1984).

The trial court possesses discretionary authority to determine an appropriate sentence, within statutory limits. *State v. Garza*, 109 Idaho 40, 704 P.2d 944 (Ct. App. 1985).

A fixed sentence of ten years for a conviction of delivery of heroin was not excessive where the defendant had two prior convictions for similar offenses; the sentencing judge acted within his discretion in determining that substantial confinement was necessary to protect society from the defendant's repeated drug trafficking. *State v. Garza*, 109 Idaho 40, 704 P.2d 944 (Ct. App. 1985).

The defendant's indeterminate five-year sentence for possession of marijuana with intent to deliver was not an abuse of discretion, where the judge could have reasonably concluded that the defendant's involvement went beyond the sale of a single ounce of marijuana, and the defendant was later convicted of another crime. *State v. Paz*, 112 Idaho 407, 732 P.2d 376 (Ct. App. 1987).

The three concurrent indeterminate five-year sentences for three counts of delivery of a controlled substance, one for each count, involving a presumed confinement for one and two-third years, was held reasonable when viewed upon the facts. *State v. Edwards*, 113 Idaho 821, 748 P.2d 405 (Ct. App. 1987).

In prosecution for unlawful delivery of heroin and cocaine, the judge abused his discretion by pronouncing a 30-year indeterminate sentence and by declining to reduce the sentence when requested to do so pursuant to Idaho R. Crim. P. 35, where the defendant had no prior criminal record and was of good character before his involvement in these drug transactions, and his participation in the transactions was encouraged by offers of large sums of money from government agents; 20 years was the heaviest appropriate sanction. *State v. Carrasco*, 114 Idaho 348, 757 P.2d 211 (Ct. App. 1988), rev'd on other grounds, 117 Idaho 295, 787 P.2d 281 (1990).

In prosecution for attempted manufacture of methamphetamine, the district court did

not abuse its discretion in sentencing the defendant to a fixed 15-year prison term, where he intentionally left the state to avoid the sentence, resulting in the forfeiture of the security which was his mother's home, he was convicted in subsequent drug-involved crimes, and he was previously involved in a killing. *State v. Ballard*, 114 Idaho 799, 761 P.2d 1151 (1988).

The court properly denied a motion for a reduction of sentence by defendant convicted of possession of controlled substance with intent to deliver and of theft by possession of stolen property where defendant was sentenced to concurrent, unified sentences of seven years with three years minimum confinement and of five years with three years minimum confinement, and these sentences were well within the statutorily permitted maximum penalties. *State v. Garcia*, 115 Idaho 559, 768 P.2d 822 (Ct. App. 1989).

Where a unified sentence has been imposed, and where defendant claims that the sentence is excessive, an appellate court examines the minimum period of confinement established by the sentencing court as the probable measure of confinement. *State v. Heer*, 116 Idaho 969, 783 P.2d 308 (Ct. App. 1989).

Where defendant was convicted of possessing approximately nine pounds of marijuana with intent to deliver and was sentenced as a persistent violator to 30 years with a 15-year minimum term of confinement, and the sentencing judge wanted to send a "message" to drug traffickers, to law enforcement officers and to the public, as well as wanting to protect society, such "message" sentences must be tailored to the facts at hand, and the goals of protecting society and sending a "message" in this case, where defendant's prior record involved a long history of criminal offenses, but no violent crimes and no activities in controlled substances other than marijuana, did not require a minimum period of incarceration exceeding ten years. *State v. Gauna*, 117 Idaho 83, 785 P.2d 647 (Ct. App. 1989).

It was not necessary for the court to resort to § 37-2739A for authority to impose a life sentence as a maximum penalty as the offense with which defendant was charged, delivery of a schedule II controlled substance, carries with it the maximum possible penalty of life imprisonment. *State v. Way*, 117 Idaho 594, 790 P.2d 375 (Ct. App. 1990).

A unified sentence of five and one-half years with a one-year minimum confinement period followed by a four and one-half year indeterminate period was not excessive for a conviction of possession of cocaine with intent to deliver. *State v. Zamora*, 118 Idaho 619, 798 P.2d 464 (Ct. App. 1990).

Where the sentencing judge imposed a minimum period of confinement of three years for

possession of controlled substance with the intent to deliver, the sentence was reasonable where it accomplished the primary objective of protecting society and met any or all of the related goals of deterrence, rehabilitation, or retribution. *State v. Huck*, 119 Idaho 10, 802 P.2d 1222 (Ct. App. 1990).

Where sentence imposed, an indeterminate term of nine years with a minimum period of three years' incarceration, was clearly within the statutory maximum of a fixed life sentence and defendant provided no argument showing that the sentence was unreasonable in light of the facts of his case the sentence was upheld. *State v. Rodriguez*, 118 Idaho 948, 801 P.2d 1299 (Ct. App. 1990).

Where, although defendant, convicted of possession of cocaine and possession of marijuana, did not have a prior felony record, he had a significant misdemeanor record which would give some cause for concern about his willingness and ability to be law abiding, where, in addition, the police found nine ounces of cocaine, 16 ounces of marijuana, \$11,900 in cash, drug paraphernalia and other evidence of the sale of controlled substances, where defendant admitted to using cocaine on a daily basis for a period of several years, a pattern which the district court characterized as a \$100,000 a year habit, and where the district judge found, and the record supported his finding, that defendant was engaged in a regular activity of selling drugs for profit, namely cocaine, the district judge properly determined that the need to protect society warranted a prison term. *State v. Christiansen*, 119 Idaho 841, 810 P.2d 1127 (Ct. App. 1990).

Where a sentence imposed for the delivery charge was twice the length of that given for the possession charge, the sentence was not excessive where court's comments underscored the seriousness of the menace which drug dealing presents to society, and the need to protect against that harmful activity, and in light of the legislature's implicit determination that delivery of a controlled substance is the more serious crime, warranting a maximum penalty of life imprisonment compared to the three-year maximum sentence provided for possession. *State v. Fuller*, 118 Idaho 962, 801 P.2d 1313 (Ct. App. 1990).

Although district judge noted that the defendant had no prior record, had children, and was recently remarried, these factors were outweighed by the fact that her ex-husband, and her friends and acquaintances, used and had dealings with drugs, and the court properly determined that one-year of confinement was the best way to keep the defendant from repeating her crime and from being a further threat to the public and to herself. *State v. Marks*, 119 Idaho 64, 803 P.2d 565 (Ct. App. 1991).

Where the district judge found the defendant was not being fully truthful about her

involvement with drugs but was minimizing her drug activities and where defendant's disregard for orders to appear at court for evaluation further dissuaded the judge from ordering probation initially, the objectives of general deterrence and rehabilitation as stated in the judge's reasoning satisfied the reasonableness test of the measure of confinement and the sentence of confinement was not an abuse of discretion. *State v. Marks*, 119 Idaho 64, 803 P.2d 565 (Ct. App. 1991).

Unified sentences of 15 years, with a minimum period of confinement of five years, on two counts of delivery of a controlled substance, heroin, with the sentences to be served concurrently were not unreasonably and excessively harsh and therefore did not constitute an abuse of the court's sentencing discretion where facts that defendant was 30 years old, divorced with dependent children, was a reliable and hard worker when employed, had no formal education, had considerable familial support and was well liked by his friends, had no prior criminal record had one shoplifting conviction five years earlier and did not smoke, drink or use drugs and expressed contrition and repentance over his involvement with these drug transactions were balanced against the nature of the offense and the protection of the public interest, and the period of incarceration clearly reflect the primary objective of protection of society, and the deterrence both of defendant and other individuals who may be tempted to engage in the distribution of large quantities of heroin or other controlled substances. *State v. Baiz*, 120 Idaho 292, 815 P.2d 490 (Ct. App. 1991).

Defendant's fixed term of two years confinement for delivery of a controlled substance was reasonable in light of the nature of the crimes he committed; the maximum penalty which the district court could have imposed under Idaho law; his character as revealed by his extensive criminal history and the other information contained in his presentence investigation report; and the facts showed that he was a threat to society. *State v. Esparza*, 120 Idaho 578, 817 P.2d 1102 (Ct. App. 1991).

The district court did not abuse its sentencing discretion where it considered defendant's extensive criminal background of five felonies and one misdemeanor, and emphasized the court's concern for the protection of society from the harm that could result from his conduct, and the court considered defendant's drug and alcohol problem. *State v. Hoak*, 120 Idaho 415, 816 P.2d 371 (Ct. App. 1991).

The three-year minimum period of confinement imposed by the trial court did not represent an abuse of discretion where defendant was charged with three counts of delivery of a controlled substance, cocaine, based on three separate and substantial transactions involving a total amount in excess of \$8,000 despite

progress reports that were quite favorable. State v. Hernandez, 121 Idaho 114, 822 P.2d 1011 (Ct. App. 1991).

Where defendant sold heroin on five separate occasions to an undercover officer and, simultaneously with his arrest on these charges, he was also arrested on an outstanding federal warrant for illegal entry into the United States and for possessing heroin and cocaine, unified sentences of 20 years in the custody of the board of correction with minimum periods of confinement of ten years was reasonable. State v. Sanchez, 121 Idaho 124, 822 P.2d 1021 (Ct. App. 1991).

A unified sentence of seven years in the custody of the board of correction for delivery of a controlled substance with a minimum period of confinement of three years, to be served concurrently with a sentence defendant was already serving, was reasonable where defendant was on parole at the time she committed the offense, had background and marital problems, and had unfortunately allowed herself to fall into a "vicious cycle" of association with drug dealers and users and abusers of drugs. State v. Ochoa, 121 Idaho 536, 826 P.2d 497 (Ct. App. 1992).

Although the record revealed that the sentence imposed for the drug possession count was clearly in excess of that provided by this section which limits the period of confinement to a maximum of three years, the Idaho supreme court will not address on appeal a challenge to the legality of a sentence where the trial court was not given an opportunity to consider the issue. State v. Lavy, 121 Idaho 842, 828 P.2d 871 (1992).

Where defendant received a sentence of a fixed four year term followed by an indeterminate eight year term for manufacturing of illegal drugs, the record indicated that the trial court took into consideration both the seriousness of the crimes and defendant's unique background, including his education and lack of any criminal record; furthermore, the sentence for the manufacturing count clearly was within the maximum penalty permitted pursuant to this section; consequently, the sentence imposed for the manufacturing count was not unreasonable under the facts of this case and the trial court did not abuse its discretion in denying defendant's plea for leniency. State v. Lavy, 121 Idaho 842, 828 P.2d 871 (1992).

A unified sentence of nine years with a minimum period of confinement of two years, for possession of a controlled substance with intent to deliver, was not an abuse of discretion, where although the evidence presentence indicated that defendant's behavior and attitudes were good, and that he was taking advantage of the programs offered at the Idaho state correctional institution, the district court decided not to reduce the sentence imposed because of the magnitude and

seriousness of the crime. State v. Brydon, 121 Idaho 890, 828 P.2d 919 (Ct. App. 1992), overruled on other grounds, State v. Tranmer, 135 Idaho 614, 21 P.3d 936 (Ct App. 2001).

Where defendant was sentenced to a unified 25 year sentence, with 12 years fixed, for possession of cocaine with intent to deliver, a fixed five-year term, to run concurrently, for possession of marijuana in excess of three ounces and in addition, the court imposed maximum fines of \$25,000 and \$10,000 respectively, the sentence did not constitute cruel and unusual punishment. State v. Fairchild, 121 Idaho 960, 829 P.2d 550 (Ct. App. 1992).

Unified sentences of eight years with minimum periods of confinement of three years on each of two counts of delivery of a controlled substance was not excessive where the primary occupation of the defendant at the time of his arrest was the sale of drugs. State v. Lamas, 121 Idaho 1027, 829 P.2d 1376 (Ct. App. 1992).

A 10-year term which included a minimum of five-years' incarceration for delivery of heroin was not an abuse of discretion where defendant was in possession of a .45 caliber pistol when he was arrested, he was a party to three drug transactions, and he purportedly was the one from whom the other two defendants got their drugs. State v. Jardin, 121 Idaho 1030, 829 P.2d 1379 (Ct. App. 1992).

A unified sentence of six years imprisonment with a minimum period of confinement of three years delivery of heroin, a controlled substance was not an abuse of discretion where defendant had only recently immigrated to the United States and the facts in the presentence report indicated that he was involved in an organized drug distribution syndicate. State v. Pena, 121 Idaho 1032, 829 P.2d 1381 (Ct. App. 1992).

An eight-year prison term, with five years fixed, for delivery of heroin was not an abuse of discretion where the district judge rejected defense counsel's argument that the state could ill afford the costs of incarcerating an illegal alien and the terse comments of the judge in sentencing defendant clearly demonstrated his concern for retribution and for the protection of society from the "poison" being distributed by drug traffickers. State v. Perez, 122 Idaho 1, 830 P.2d 1 (Ct. App. 1992).

Where defendant had been charged with two separate deliveries of heroin and had pled guilty to one count of delivery under an agreement with the state, the district court did not abuse its discretion in declining to reduce the sentence of five to eight years it had previously imposed. State v. Gonzales, 122 Idaho 17, 830 P.2d 528 (Ct. App. 1992).

Because defendant's sentence did not exceed the statutory maximum of life imprisonment, and no contention was made that the sentence was otherwise illegal, the court re-

fused to consider the issue of whether sentence of 10 years minimum confinement and \$10,000 fine was unduly harsh for conviction of delivery of a controlled substance, heroin. Ruiz v. State, 122 Idaho 222, 832 P.2d 1157 (Ct. App. 1992).

The judgment of conviction imposing a unified sentence of five years, including a two-year fixed period of confinement for two counts of delivery of hydromorphone, a controlled substance, was affirmed, where defendant was on parole for a similar crime at the time of the instant offense, and at the time of sentencing was a self-admitted drug addict with an extensive criminal record; although defendant had made an agreement with the prosecutor, whereby certain charges were dismissed and the prosecutor agreed to recommend a lesser sentence, the court was not bound by the sentence recommendation made by the state. State v. Qualls, 122 Idaho 542, 835 P.2d 1353 (Ct. App. 1992).

Where defendant delivered five ounces, approximately 142 grams, of cocaine to an undercover police officer, a sentence of ten years in the custody of the board of correction, including a minimum period of three years' incarceration, was reasonable. State v. Salgado, 123 Idaho 247, 846 P.2d 249 (Ct. App. 1993).

District court did not abuse its discretion in denying defendant's request for a reduction of sentence where defendant's sentences for drug offenses were reasonable and where defendant committed several disciplinary offenses in prison during the time before the court relinquished jurisdiction. State v. Sapp, 124 Idaho 17, 855 P.2d 478 (Ct. App. 1993).

Where defendant was manufacturing and selling methamphetamine, a minimum period of confinement of seven years on each of three charges, to run concurrently, was not unreasonable. State v. Follinus, 124 Idaho 26, 855 P.2d 863 (1993).

Sentence of forty years with ten years fixed for conspiracy to deliver cocaine was not an abuse of discretion, where defendant admitted to the scope of his involvement with the distribution of drugs in county. State v. Banuelos, 124 Idaho 569, 861 P.2d 1234 (Ct. App. 1993), cert. denied, 510 U.S. 1098, 114 S. Ct. 936, 127 L. Ed. 2d 227 (1994).

Sentence of five years and a \$5,000 fine for conspiracy to distribute marijuana was not an abuse of discretion, where defendant was heavily involved in drug distribution and refused to fully cooperate with and admit his full involvement to the pre-sentence investigator. State v. Robles-Rivas, 125 Idaho 160, 868 P.2d 488 (Ct. App. 1993).

Where record did not indicate that district court relied upon unsubstantiated statements offered by the state, yet did indicate that court properly weighed defendant's previous felony conviction and nature of the instant

offense, 10-year sentence, with fixed 2-year term of incarceration, for felony possession of a controlled substance with intent to deliver, was not unreasonable and was affirmed. State v. Vivian, 129 Idaho 375, 924 P.2d 637 (Ct. App. 1996).

Trial court did not abuse its discretion in sentencing defendant to a sentence that included a fixed imprisonment term of five years where defendant was charged with delivery of heroin and with being a persistent violator, despite defendant's contention that the court did not give adequate consideration to his drug addiction. State v. Zamora, 129 Idaho 817, 933 P.2d 106 (1997).

Where the maximum sentence for which the crime to which defendant plead guilty was life imprisonment, defendant had the burden of showing a clear abuse of discretion by the trial court in sentencing him to a fixed imprisonment term of five years. State v. Zamora, 129 Idaho 817, 933 P.2d 106 (1997).

Sentence for possession of a controlled substance within 1000 feet of a school of a fixed minimum term of 5 years to be served consecutively to minimum term of sixty days for the substantive offense was proper and by imposing such sentence the court correctly perceived the mandatory nature of the fixed minimum sentence prescribed by § 37-2739B and the bounds of its sentencing discretion. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

While the sentence of twenty years with five years fixed was one of the longest sentences imposed on a first-time youthful drug offender in the state, it was not so harsh as to be unreasonable under any view of the facts. State v. Chareunsouk, 135 Idaho 1, 13 P.3d 1 (Ct. App. 2000).

Information regarding a defendant's expressions of political views on the legalization and use of marijuana is relevant to the sentencing decision, for it bears upon the likelihood that the defendant will repeat the crime. State v. Tadlock, 136 Idaho 413, 34 P.3d 1096 (Ct. App. 2001).

There was no abuse of discretion in a sentence imposed for delivery of methamphetamine, which consisted of a unified prison term of seven years with three years determinate, or in a district court's decision not to reduce defendant's possession of methamphetamine sentence upon revocation of probation, because (1) at the time of sentencing, defendant had a twenty-year history of criminal offenses relating to alcohol and drug abuse; (2) before the instant offenses, defendant had been convicted three times for driving under the influence, once for unlawfully obtaining a legend drug by fraud, and twice for possession of methamphetamine, in addition to numerous theft offenses; and (3) while on probation for possession of methamphetamine, defendant engaged in the business of selling that drug to

others. *State v. McCarthy*, 145 Idaho 397, 179 P.3d 360 (Ct. App. 2008).

Where defendant served his entire prison term following a sentence for possession of methamphetamine in violation of this section, state's jurisdictional challenge to lower court decision was moot since outcome would have no effect on defendant. *State v. Barclay*, 149 Idaho 6, 232 P.3d 327 (2010).

#### —Deportation.

Where the district court did not order defendant's deportation, but merely made a provision conditioning the suspension of his sentence upon the likely event that he would be deported by a proper federal authority, conviction and sentence for possession of cocaine with intent to deliver was affirmed; such provision in a sentence is not an abuse of judicial discretion. *State v. Martinez*, 129 Idaho 411, 925 P.2d 832 (1996).

#### Specific Factual Allegations.

Where the informations separately charging defendant with the two crimes of manufacturing and possession with intent to deliver a controlled substance contained no specific factual allegations showing what acts were alleged to be the basis for each respective crime, and since there were no specific references to separate acts committed at different times in order to satisfy the "temporal" test under former § 18-301, the district court erred in refusing to dismiss one of the counts against defendant. *State v. Ledbetter*, 118 Idaho 8, 794 P.2d 278 (Ct. App. 1990).

#### Unauthorized Possession.

It is immaterial when a controlled substance was acquired, for the offense is the unauthorized possession of a controlled substance, without regard to the time the substance was acquired. *State v. Kellogg*, 100 Idaho 483, 600 P.2d 787 (1979).

This section does not provide a penalty for the acquisition of controlled substances prior to the effective date of the act, rather, the penalty it imposes is for continuing to possess a controlled substance after the act's effective date. *State v. Kellogg*, 100 Idaho 483, 600 P.2d 787 (1979).

The law itself by classification of marijuana as a drug not used for medicinal purposes, negates the burden on the state to prove absence of a prescription. *State v. Segovia*, 93 Idaho 208, 457 P.2d 905 (1969) (see § 37-2745).

**Cited in:** *State v. O'Mealey*, 95 Idaho 202, 506 P.2d 99 (1973); *State v. Pontier*, 95 Idaho 707, 518 P.2d 969 (1974); *State v. Yoder*, 96

Idaho 651, 534 P.2d 771 (1975); *State v. Oropeza*, 97 Idaho 387, 545 P.2d 475 (1976); *State v. Arambula*, 97 Idaho 627, 550 P.2d 130 (1976); *Gibbs v. Shaud*, 98 Idaho 37, 557 P.2d 631 (1976); *State v. Post*, 98 Idaho 834, 573 P.2d 153 (1978); *State v. Lindner*, 100 Idaho 37, 592 P.2d 852 (1979); *State v. Holtslander*, 102 Idaho 306, 629 P.2d 702 (1981); *State v. Salinas*, 103 Idaho 54, 644 P.2d 376 (Ct. App. 1982); *State v. Molinelli*, 105 Idaho 833, 673 P.2d 433 (1983); *State v. Fowler*, 106 Idaho 3, 674 P.2d 432 (Ct. App. 1983); *State v. Lewis*, 106 Idaho 800, 683 P.2d 448 (Ct. App. 1984); *State v. Young*, 107 Idaho 671, 691 P.2d 1286 (Ct. App. 1984); *State v. Peterson*, 108 Idaho 463, 700 P.2d 85 (Ct. App. 1985); *State v. Rice*, 109 Idaho 985, 712 P.2d 686 (Ct. App. 1985); *State v. Rusho*, 110 Idaho 556, 716 P.2d 1328 (Ct. App. 1986); *State v. Prestwich*, 110 Idaho 966, 719 P.2d 1226 (Ct. App. 1986); *State v. Forshaw*, 112 Idaho 162, 730 P.2d 1082 (Ct. App. 1986); *State v. Schaffer*, 112 Idaho 1024, 739 P.2d 323 (1987); *State v. Burnside*, 113 Idaho 65, 741 P.2d 352 (Ct. App. 1987); *State v. Nab*, 113 Idaho 168, 742 P.2d 423 (Ct. App. 1987); *State v. Roy*, 113 Idaho 388, 744 P.2d 116 (Ct. App. 1987); *State v. Molina*, 113 Idaho 449, 745 P.2d 1070 (Ct. App. 1987); *State v. Thompson*, 113 Idaho 466, 745 P.2d 1087 (Ct. App. 1987); *State v. Prestwich*, 115 Idaho 317, 766 P.2d 787 (Ct. App. 1988); *State v. Guinn*, 114 Idaho 30, 752 P.2d 632 (Ct. App. 1988); *State v. Wright*, 115 Idaho 1043, 772 P.2d 250 (Ct. App. 1989); *State v. Woodman*, 116 Idaho 716, 779 P.2d 30 (Ct. App. 1989); *State v. Cardenas*, 119 Idaho 109, 803 P.2d 1015 (Ct. App. 1991); *State v. Cervantes*, 122 Idaho 238, 832 P.2d 1173 (Ct. App. 1992); *State v. Barreto*, 122 Idaho 453, 835 P.2d 688 (Ct. App. 1992); *State v. Warren*, 123 Idaho 20, 843 P.2d 170 (Ct. App. 1992); *Huck v. State*, 124 Idaho 155, 857 P.2d 634 (1993); *State v. Dice*, 126 Idaho 595, 887 P.2d 1102 (Ct. App. 1994); *State v. Johnson*, 126 Idaho 859, 893 P.2d 806 (Ct. App. 1995); *State v. Julian*, 129 Idaho 133, 922 P.2d 1059 (1996); *Blewett v. Klauser*, 129 Idaho 612, 930 P.2d 1357 (1997); *State v. Gett*, 130 Idaho 196, 938 P.2d 1234 (1997); *State v. Larrea*, 130 Idaho 290, 939 P.2d 866 (Ct. App. 1997); *State v. Chavez*, 134 Idaho 308, 1 P.3d 809 (Ct. App. 2000); *State v. Holler*, 136 Idaho 287, 32 P.3d 679 (Ct. App. 2001); *State v. Swader*, 137 Idaho 733, 52 P.3d 878 (Ct. App. 2002); *United States v. Patzer*, 284 F.3d 1043 (9th Cir. 2002); *State v. Veneroso*, 138 Idaho 925, 71 P.3d 1072 (Ct. App. 2003); *State v. Dreier*, 139 Idaho 246, 76 P.3d 990 (Ct. App. 2003); *State v. Stewart*, 145 Idaho 641, 181 P.3d 1249 (Ct. App. 2008).

**OPINIONS OF ATTORNEY GENERAL**

Provisions of local initiatives allowing persons to use marijuana for medicinal purposes declaring that the growth and cultivation of

industrial hemp is a positive and beneficial farming activity conflict with state law and are invalid. OAG 07-02.

**RESEARCH REFERENCES**

**A.L.R.** — Persons or entities entitled to restitution as "victim" under state criminal restitution statute. 92 A.L.R.5th 35.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases. 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases. 2 A.L.R.6th 551.

**37-2732A. Sacramental use of peyote permitted.** — The criminal sanctions provided in this chapter do not apply to that plant of the genus *Lophophora Williamii* [Williamsii] commonly known as peyote when such controlled substance is transported, delivered or possessed to be used as the sacrament in religious rites of a bona fide native American religious ceremony conducted by a bona fide religious organization; provided, that this exemption shall apply only to persons of native American descent who are members or eligible for membership in a federally recognized Indian tribe. Use of peyote as a sacrament in religious rites shall be restricted to Indian reservations as defined in subsection (2) of section 63-3622Z, Idaho Code. A person transporting, possessing or distributing peyote in this state for religious rites shall have on their person a tribal enrollment card, a card identifying the person as a native American church member and a permit issued by a bona fide religious organization authorizing the transportation, possession and distribution of peyote for religious rites.

**History.**

I.C., § 37-2732A, as added by 1991, ch. 125, § 1, p. 278.

**STATUTORY NOTES****Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to supply the

correct botanical name of the referenced plant.

**37-2732B. Trafficking — Mandatory sentences.** — (a) Except as authorized in this chapter, and notwithstanding the provisions of section 37-2732, Idaho Code:

(1) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, one (1) pound of marijuana or more, or twenty-five (25) marijuana plants or more, as defined in section 37-2701, Idaho Code, is guilty of a felony, which felony shall be known as "trafficking in marijuana." If the quantity of marijuana involved:

(A) Is one (1) pound or more, but less than five (5) pounds, or consists of twenty-five (25) marijuana plants or more but fewer than fifty (50) marijuana plants, regardless of the size or weight of the plants, such

person shall be sentenced to a mandatory minimum fixed term of imprisonment of one (1) year and fined not less than five thousand dollars (\$5,000);

(B) Is five (5) pounds or more, but less than twenty-five (25) pounds, or consists of fifty (50) marijuana plants or more but fewer than one hundred (100) marijuana plants, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(C) Is twenty-five (25) pounds or more, or consists of one hundred (100) marijuana plants or more, regardless of the size or weight of the plants, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000).

(D) The maximum number of years of imprisonment for trafficking in marijuana shall be fifteen (15) years, and the maximum fine shall be fifty thousand dollars (\$50,000).

(E) For the purposes of this section, the weight of the marijuana is its weight when seized or as determined as soon as practicable after seizure, unless the provisions of subsection (c) of this section apply.

(2) Any person who knowingly manufactures, delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of cocaine or of any mixture or substance containing a detectable amount of cocaine is guilty of a felony, which felony shall be known as "trafficking in cocaine." If the quantity involved:

(A) Is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(B) Is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000);

(C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000).

(D) The maximum number of years of imprisonment for trafficking in cocaine shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(3) Any person who knowingly manufactures or attempts to manufacture methamphetamine and/or amphetamine is guilty of a felony which shall be known as "trafficking in methamphetamine and/or amphetamine by manufacturing." Any person convicted of trafficking in methamphetamine and/or amphetamine by attempted manufacturing shall be sentenced to a mandatory minimum fixed term of imprisonment of two (2) years and not to exceed fifteen (15) years imprisonment and fined not less than ten thousand dollars (\$10,000). Any person convicted of trafficking in methamphetamine and/or amphetamine by manufacturing shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5)

years and not to exceed life imprisonment and fined not less than twenty-five thousand dollars (\$25,000). The maximum number of years of imprisonment for trafficking in methamphetamine and/or amphetamine by manufacturing shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(4) Any person who knowingly delivers, or brings into this state, or who is knowingly in actual or constructive possession of, twenty-eight (28) grams or more of methamphetamine or amphetamine or of any mixture or substance containing a detectable amount of methamphetamine or amphetamine is guilty of a felony, which felony shall be known as "trafficking in methamphetamine or amphetamine." If the quantity involved:

- (A) Is twenty-eight (28) grams or more, but less than two hundred (200) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);
- (B) Is two hundred (200) grams or more, but less than four hundred (400) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of five (5) years and fined not less than fifteen thousand dollars (\$15,000);
- (C) Is four hundred (400) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000).
- (D) The maximum number of years of imprisonment for trafficking in methamphetamine or amphetamine shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(5) Any person who knowingly manufactures, delivers, brings into this state, or who is knowingly in actual or constructive possession of the below-specified quantities of any of the following immediate precursors to methamphetamine or amphetamine (namely ephedrine, methylamine, methyl formamide, phenylacetic acid, phenylacetone, or pseudoephedrine) as defined in section 37-2707(g)(1), Idaho Code, or any compound, mixture or preparation which contains a detectable quantity of these substances, is guilty of a felony which shall be known as "trafficking in immediate precursors of methamphetamine or amphetamine." If the quantity:

- (A) Of ephedrine is five hundred (500) grams or more;
  - (B) Of methylamine is one-half (1/2) pint or more;
  - (C) Of methyl formamide is one-quarter (1/4) pint or more;
  - (D) Of phenylacetic acid is five hundred (500) grams or more;
  - (E) Of phenylacetone is four hundred (400) grams or more;
  - (F) Of pseudoephedrine is five hundred (500) grams or more;
- such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than twenty-five thousand dollars (\$25,000). The maximum number of years of imprisonment for trafficking in immediate precursors of methamphetamine or amphetamine in the quantities specified in paragraphs (A) through (F) of this subsection (5) shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000). If the quantity of pseudoephedrine is twenty-five (25) grams or more, but less than five hundred (500) grams,

such person shall be sentenced to a term of imprisonment of up to ten (10) years and fined not more than twenty-five thousand dollars (\$25,000).

(6) Any person who knowingly manufactures, delivers or brings into this state, or who is knowingly in actual or constructive possession of, two (2) grams or more of heroin or any salt, isomer, or salt of an isomer thereof, or two (2) grams or more of any mixture or substance containing a detectable amount of any such substance is guilty of a felony, which felony shall be known as "trafficking in heroin." If the quantity involved:

(A) Is two (2) grams or more, but less than seven (7) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of three (3) years and fined not less than ten thousand dollars (\$10,000);

(B) Is seven (7) grams or more, but less than twenty-eight (28) grams, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of ten (10) years and fined not less than fifteen thousand dollars (\$15,000);

(C) Is twenty-eight (28) grams or more, such person shall be sentenced to a mandatory minimum fixed term of imprisonment of fifteen (15) years and fined not less than twenty-five thousand dollars (\$25,000).

(D) The maximum number of years of imprisonment for trafficking in heroin shall be life, and the maximum fine shall be one hundred thousand dollars (\$100,000).

(7) A second conviction for any trafficking offense as defined in subsection (a) of this section shall result in a mandatory minimum fixed term that is twice that otherwise required under this section.

(8) Notwithstanding any other provision of law, with respect to any person who is found to have violated the provisions of this section, adjudication of guilt or the imposition or execution of sentence shall not be suspended, deferred, or withheld, nor shall such person be eligible for parole, prior to serving the mandatory minimum fixed term of imprisonment prescribed in this section. Further, the court shall not retain jurisdiction.

(b) Any person who agrees, conspires, combines or confederates with another person or solicits another person to commit any act prohibited in subsection (a) of this section is guilty of a felony and is punishable as if he had actually committed such prohibited act.

(c) For the purposes of subsections (a) and (b) of this section the weight of the controlled substance as represented by the person selling or delivering it is determinative if the weight as represented is greater than the actual weight of the controlled substance.

**History.**

I.C., § 37-2732B, as added by 1992, ch. 336, § 1, p. 1005; am. 1995, ch. 58, § 1, p. 129; am. 1995, ch. 103, § 1, p. 331; am. 1998, ch. 168, § 1, p. 563; am. 1999, ch. 143, § 2, p. 407; am. 2002, ch. 186, § 1, p. 537; am. 2006, ch. 245, § 1, p. 749.

**STATUTORY NOTES****Amendments.**

This section was amended by two 1995 acts

which appear to be compatible and have been compiled together.

The 1995 amendment, by ch. 58, § 1, in subdivision (a)(2)(A) added "two hundred" preceding "(200) grams" and in subsection (a)(7) in the first sentence added "the" following "adjudication of guilt or" and added "or execution" preceding "of sentence shall not".

The 1995 amendment, by ch. 103, § 1, in subdivision (a) (1) (A) deleted "in excess of" following "is" and added "or more" preceding "but not less than five"; in subdivision (a) (2) (A) added "two hundred" preceding "(200) grams"; in subdivision (a) (5) (C) substituted "fifteen (15)" for "twenty-five (25)" following "mandatory minimum fixed term of imprison-

ment of"; in subsection (a) (7) in the first sentence deleted ", except as provided in subsection (a) (8) of this section" following "prescribed in this section" and deleted subsection (a) (8).

The 2006 amendment, by ch. 245, in the last paragraph of subsection (5), inserted "in the quantities specified in paragraphs (A) through (F) of this subsection (5)" and added the last sentence.

#### **Effective Dates.**

Section 2 of S.L. 1995, ch. 103 declared an emergency. Approved March 13, 1995.

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

Constitutionality.  
 Due process.  
 Duress.  
 Entrapment.  
 Equal protection.  
 Evidence.  
 Fixed term sentences.  
 Forfeiture improper.  
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 One act as multiple crimes.  
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 Searches.  
 — Private.  
 — Probable cause.  
 — Warrantless.  
 Sentence upheld.  
 Single offense.  
 Sufficiency of information.  
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#### **Constitutionality.**

This section, after its 1995 amendment which deleted the provision allowing the mandatory sentence to be reduced upon the motion of the prosecuting attorney, fully complies with the requirement of Idaho Const., Art. V, § 13 that mandatory sentences shall not be reduced and, therefore, such section is constitutional. State v. Puetz, 129 Idaho 842, 934 P.2d 15 (1997).

The amendment to Idaho Const., Art. IV, § 13, effectively circumscribed the power of the courts to suspend a mandatory minimum sentence contained in a statute enacted pursuant to the authority of the constitution; therefore, subsection (a)(7) [now (a)(8)] of this section does not violate the constitution. State v. Pena-Reyes, 131 Idaho 656, 962 P.2d 1040 (1998).

This section is not unconstitutional in that it does not impermissibly abrogate the inher-

ent authority of the courts to suspend sentences, as that authority has been effectively circumscribed by Idaho Const., Art. V, § 13; nor does it deny due process because there is no element of intent, as the legislature elected not to make intent an element of the offense. State v. Rogerson, 132 Idaho 53, 966 P.2d 53 (Ct. App. 1998).

The statute was not unconstitutionally vague because the definition of marijuana plant was clear; it meant plants with a root structure attached. State v. Schumacher, 136 Idaho 509, 37 P.3d 6 (Ct. App. 2001).

Statutory fine for trafficking in controlled substances under paragraph (a)(3) was a mandatory sentence imposed by that section and authorized by the Idaho Constitution; therefore, because the Idaho supreme court had upheld the legislative power to mandate minimum sentences, and treated mandatory

minimum fines as part of the sentences, the fines, as part of the sentences, did not create a separation of powers violation under the Idaho Const., art. V, § 13. State v. Alexander, 138 Idaho 18, 56 P.3d 780 (Ct. App. 2002).

#### Due Process.

Where, even if an information had not fully informed defendant of the charge which he had to defend against, trafficking in methamphetamine by manufacturing, a violation of paragraph (a)(3), the preliminary hearing evidence established that defendant was given notice of how the state intended to present its case, and the evidence which had to be refuted at trial; consequently, defendant could not claim prejudice to his defense, and his due process challenge failed. State v. Dorsey, 139 Idaho 149, 75 P.3d 203 (Ct. App. 2003).

State did not violate defendant's due process rights by destroying the hazardous portions of the methamphetamine lab because it was not done in bad faith and the police had no reason to believe that the presence or absence of fingerprints on the lab equipment would have potentially exculpatory value. State v. Edney, 145 Idaho 694, 183 P.3d 782 (Ct. App. 2008).

#### Duress.

Where a defendant picked up a package at the airport that the police knew contained methamphetamine, and where the police officer, who did not tell defendant that he was a police officer, told defendant that he knew what was inside the package and would call police unless she gave him a "pinch" of it, such substance was not delivered under duress for defendant failed to show how her life would be endangered if she had refused to deliver the illegal substance; therefore, trial judge did not err in denying defendant's motion to dismiss the delivery charge. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

#### Entrapment.

Where defendant picked up a package at the airport that the police knew contained methamphetamine, action of the police officer, who did not tell defendant that he was a police officer, in telling defendant that he knew what was inside the package and would call police unless she gave him a "pinch" of it, was not entrapment since the ruse was not to convince an innocent citizen to commit a crime, but to discover whether defendant knew that the package sent to her contained methamphetamine, and as such, it served as a legitimate method of ferreting out a crime. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Defendant challenged the description in instruction of the predisposition element of entrapment, that defendant "was not ready and willing to commit the crime of trafficking

in methamphetamine before the law enforcement officials spoke" with defendant. However, the instruction called upon the jury to determine whether defendant was predisposed to commit the charged offense "without the actions" of the state or its agent and did not mislead the jury or prejudice defendant. State v. Henry, 138 Idaho 364, 63 P.3d 490 (Ct. App. 2003).

#### Equal Protection.

Because the classification of persons convicted of trafficking in a controlled substance is neither a suspect classification nor an invalidly discriminatory classification, the rational basis test is used in claims of equal protection violation. State v. Payan, 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998).

#### Evidence.

In prosecution for delivery of and trafficking in methamphetamine, evidence, that defendant sent two money orders, both for substantial amounts, to the identical person in a city within the same week that two packages were sent from fictitious people and addresses and delivered to defendant through an airline from the same city, made it more probable that defendant was engaged in trafficking methamphetamine and, thus, such evidence was relevant; however, the trial court's conclusion that the probative value of the evidence was not outweighed by its unfair prejudice was not an abuse of discretion and such evidence was properly admitted. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Evidence was sufficient to sustain defendant's conviction for trafficking by attempted manufacture of methamphetamine where police found hundreds of pseudoephedrine tablets, lithium batteries, and anhydrous ammonia in defendant's home. State v. Swader, 137 Idaho 733, 52 P.3d 878 (Ct. App. 2002).

In defendant's drug case, the state's evidence showing that defendant manufactured or possessed over 2500 grams of a substance that contained methamphetamine was sufficient to support the jury's finding that defendant violated paragraph (a)(3)(C) [now (a)(4)(C)] by manufacturing or possessing 400 grams or more of a substance containing a detectable amount of methamphetamine. State v. Palmer, 138 Idaho 931, 71 P.3d 1078 (Ct. App. 2003).

Evidence was sufficient to support jury's verdict of guilty of aiding and abetting trafficking in cocaine and aiding and abetting failure to affix illegal drug tax stamps where defendant arranged for the sale of cocaine to a confidential informant and accompanied him to the drug dealer's residence where the sale took place. State v. Romero-Garcia, 139 Idaho 199, 75 P.3d 1209 (Ct. App. 2003).

Defendant claimed that the trial court erred in instructing the jury, and that the jury

should have been given the definition of "deliver" contained within § 37-2701, asserting that an indirect transfer did not equate to a constructive transfer and that the district court's instruction lessened the state's burden of proof; however, the jury was instructed from the pattern Idaho criminal jury instructions, which were presumptively correct. Moreover, the evidence was sufficient to sustain the conviction. *State v. Cuevas-Hernandez*, 140 Idaho 373, 93 P.3d 704 (Ct. App. 2004).

Note written by defendant's co-conspirator to the co-conspirator's girlfriend, showing that the co-conspirator was attempting to cover up the crime by dissuading his girlfriend from divulging information to police, was not hearsay; although the note was offered in error under Idaho Evidence Rule 801(d)(2)(E), such error was harmless because the note was admissible on other grounds. *State v. Harris*, 141 Idaho 721, 117 P.3d 135 (Ct. App. 2005).

Even though the district court erred by creating the impression that only a general intent was required to find defendant guilty of conspiracy to traffic in controlled substances, the error was harmless, because there was overwhelming evidence that defendant was an active participant in the group, including: (1) a co-conspirator's testimony that defendant was the group's boss; (2) the high level of phone contact between defendant's two phones and his co-conspirators' phones; (3) when defendant was arrested, officers found inside his vehicle the titles of several of the vehicles used by his co-conspirators in the drug operation; (4) officers watched defendant visiting several of the residences from which the co-conspirators were known to operate and in which drugs, cash, and other paraphernalia were later found; and (5) a document linking the drug operation to Utah, where defendant lived, that provided a breakdown of the drugs transported from Utah. *State v. Rolon*, 146 Idaho 684, 201 P.3d 657 (Ct. App. 2008).

#### Fixed Term Sentences.

Because the fixed term sentences provided in this section do not fall within the specific limitation on inherent judicial power specified in the 1978 amendment to Idaho Const., Art. 5, § 13, the trial courts are free to exercise their inherent power to impose the fixed term sentences they consider appropriate. *State v. Sarabia*, 125 Idaho 815, 875 P.2d 227 (1994).

#### Forfeiture Improper.

Trial court erred in ordering the forfeiture of defendant's motorcycle as part of his conviction for trafficking in 28 grams or more of methamphetamine, a violation of paragraph (a)(4)(A), where no drugs were found in the motorcycle, and there was no evidence that defendant had previously used it to obtain the

drugs he possessed when arrested or that it facilitated the offense for which he was convicted. *State v. Stevens*, 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004).

#### Informants.

In prosecution for delivery and trafficking in methamphetamine in violation of § 37-2732 and this section, where defendant failed to articulate any basis for her assertion that the in camera hearing was insufficient to protect her rights and also failed to demonstrate how the informant's identity would have presented her with necessary information that the in camera hearing did not, trial court did not err in refusing to disclose the informant's identity. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

#### Information.

Information was sufficient where every element made criminal by paragraph (a)(3) was alleged in the amended information, the elements of offense charged, reference to particular section of the drug trafficking statute, and the information regarding person, place and time involved fairly informed defendant of the charge he had to defend against. *State v. Dorsey*, 139 Idaho 149, 75 P.3d 203 (Ct. App. 2003).

It was not error for an information to have charged defendant with both manufacture and attempted manufacture of methamphetamine in the same count of the information, because the statute enumerated a series of acts either of which, separately or all together, could constitute the offense, and all of such acts could have been set forth and charged in a single count. *State v. Dorsey*, 139 Idaho 149, 75 P.3d 203 (Ct. App. 2003).

#### Jurisdiction.

In defendant's drug case, where the second amended information was filed increasing the amount of methamphetamine from 28 grams to 400 grams, it did not charge a greater or different offense than the offense charged in the first amended information but merely increased defendant's potential mandatory minimum sentence. Because the offense charged was the same, it was unnecessary for a preliminary hearing to be conducted on the basis of the amendment, and, accordingly, the court was not deprived of jurisdiction over defendant's third trial. *State v. Palmer*, 138 Idaho 931, 71 P.3d 1078 (Ct. App. 2003).

#### Necessity Defense.

Where defendant picked up a package at the airport that the police knew contained methamphetamine, and where police officer, who did not tell defendant that he was a police officer, told defendant that he knew what was inside the package and would call police unless she gave him a "pinch" of it, the delivery of the substance to the police officer

was not the result of necessity; defendant's fear of being held accountable for a crime she had committed could not serve to justify the commission of another offense. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

#### One Act as Multiple Crimes.

Although it is possible for a person to violate both this section and 37-2732, this section requires the amount of cocaine involved to be at least twenty-eight grams, while section 37-2732 contains no such quantity requirements. *State v. Payan*, 132 Idaho 614, 977 P.2d 228 (Ct. App. 1998).

#### Possession.

In order to establish possession of a controlled substance, a defendant need not have actual physical possession of the substance; the state need only prove that the defendant has such dominion and control over the substance to establish constructive possession. What is crucial to the state's proof is a sufficient showing of a nexus between the accused and the controlled substance. Knowledge of the existence of controlled substances may be inferred through circumstances. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

#### Prosecutorial Misconduct.

There was no prosecutorial misconduct where prosecutor reiterated what the district court had already instructed, that the state bears the burden of proving every element beyond a reasonable doubt and that defendant has no obligation to present evidence; the prosecutor stated that criminal defendants had those and a number of other rights. *State v. Romero-Garcia*, 139 Idaho 199, 75 P.3d 1209 (Ct. App. 2003).

In defendant's drug case, because there was overwhelming evidence that methamphetamine had been manufactured in the house, any prosecutorial misstatement of the law during closing was harmless. The jury instructions provided a proper statement of the law and the jury had been instructed to disregard arguments or statements of counsel that were not based on evidence or the law. *State v. Gamble*, 146 Idaho 331, 193 P.3d 878 (Ct. App. 2008).

#### Quantities.

It was permissible for the state to establish trafficking under subsection (a)(3) of this section by adding together quantities of methamphetamine found in package received by defendant and in can found in defendant's car. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

In prosecution for trafficking in methamphetamine which according to subdivision (a)(3) requires possession of at least 28 grams, where package received by defendant contained 27.02 grams and STP can located in

defendant's car contained 6.8 grams, since the can was in defendant's car and she had just received a package containing a substantial amount of methamphetamine, the same substance as that contained in the can, and although defendant took the package to her car before delivering a sample to an undercover police officer, the package was found unopened in the car indicating that she had extracted the sample from another source within her car, jury could find that defendant had sufficient dominion and control over the can and its contents; thus, trial court did not err in refusing to grant defendant's motion for judgment of acquittal on the trafficking charge. *State v. Kopsa*, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

Under subsections (a)(3) and (c), a defendant may be convicted of trafficking in methamphetamine if the defendant represented the weight of the delivered substance to be twenty-eight grams or more, even if the actual weight was less; therefore, the evidence presented to the jury, showing that defendant represented the amount sold to be one ounce — which is more than 28 grams — was sufficient to support defendant's conviction. *State v. Escobar*, 134 Idaho 387, 3 P.3d 65 (Ct. App. 2000).

#### Reduction Denied.

District court did not err by denying defendant's motion to reduce a sentence for conspiracy to traffic in methamphetamines because a five-year fixed sentence was mandatory. *State v. Hansen*, 138 Idaho 791, 69 P.3d 1052 (2003).

#### Search Warrant.

After excluding the illegally obtained information from the search warrant application, the remaining information contained adequate facts from which the magistrate could have concluded that probable cause existed for issuance of the search warrant. *State v. Revenaugh*, 133 Idaho 774, 992 P.2d 769 (1999).

Trial court did not err in denying defendant's motion to suppress evidence found in his house where there was probable cause for issuance of the search warrant where information justified an initial vehicle stop, and several grams of methamphetamine, over \$900 in cash, and documents that appeared to be drug ledgers were found on defendant, and evidence indicated that defendant's drug possession at the time of his arrest was not an isolated instance but a part of ongoing drug trade activities; although the evidence did not point directly to defendant's home as a repository of other contraband, courts are entitled to draw reasonable inferences about where evidence is likely to be kept, based on the nature of the evidence and the type of offense. *State v. Stevens*, 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004).

**Searches.****—Private.**

Where airport narcotics police had given business cards and profile sheets to airline employees and had given them awards when they provided the police with packages containing controlled substances, airline employee who conducted search of package containing a substance which was later determined to be a controlled substance, who stated that she never saw the profile sheets, that she did not receive any training from the police, and that she did not expect to receive a payment when she opened the package, but was simply doing her duty as a citizen, was not an agent of the police, and her search was a private search; thus, defendant's Fourth Amendment rights were not impaired. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

**—Probable Cause.**

The affidavit in support of the request for a search warrant contained reliable, nonstale information that an informant had observed growing, harvested, drying and stored marijuana, thus supplying probable cause to the magistrate that a crime was being committed on the property to be searched. State v. Carlson, 134 Idaho 471, 4 P.3d 1122 (Ct. App. 2000).

**—Warrantless.**

Warrantless search of a defendant's vehicle was valid where police officer had made a lawful custodial arrest of the defendant as she attempted to back the vehicle out of its parking spot and such search was conducted as a result of such arrest. State v. Kopsa, 126 Idaho 512, 887 P.2d 57 (Ct. App. 1994).

The protective sweep exception to the warrant requirement was not rendered inapplicable to this case simply because defendant was detained rather than formally arrested at the time the protective sweep occurred. State v. Revenaugh, 133 Idaho 774, 992 P.2d 769 (1999).

The protective sweep exception to the warrant requirement applies when the suspect is arrested/detained outside, rather than inside the residence, provided that the officers have the requisite reasonable, articulable suspicion necessary to support the sweep. State v. Revenaugh, 133 Idaho 774, 992 P.2d 769 (1999).

Trial court did not err in denying defendant's motion to suppress evidence after a traffic stop and search of his person where police had reasonable suspicion to stop and search defendant where the detective was aware that defendant had previously been the subject of investigation for illegal drug activity and had just made a brief visit to a residence where a confidential informant had recently made a drug buy and the same infor-

mant had told police that the defendant made drug purchases at that location every two or three days and was selling drugs. State v. Stevens, 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004).

Warrantless entry into a residence to preserve evidence of the felony crime of trafficking in marijuana was not invalid because it was done before the search warrant hearing to preserve evidence of a nonviolent crime, and considering the penalty, trafficking in marijuana is not a relatively minor offense. State v. Fees, 140 Idaho 81, 90 P.3d 306 (2004).

**Sentence Upheld.**

Based upon the seriousness of the offense, the evidence of defendant's character, and the danger of reoffense that he presented, a unified life sentence with a seven and one-half year determinate term of incarceration and a \$ 50,000 fine was not an abuse of the district court's sentencing discretion. State v. Wilhelm, 135 Idaho 111, 15 P.3d 824 (Ct. App. 2000).

Defendant, convicted of conspiracy to traffic in at least 28 grams of heroin, was properly sentenced to a unified term of life imprisonment with 15 years determinate. State v. Lopez, 140 Idaho 197, 90 P.3d 1279 (Ct. App. 2004).

Defendant's unified sentences of 15 years, with 5 years determinate, were not excessive, as defendant had two prior drug convictions and those sentences had not been enough to deter him from committing additional drug-related crimes. State v. Harris, 141 Idaho 721, 117 P.3d 135 (Ct. App. 2005).

**Single Offense.**

Where the district court concluded that defendant could be convicted of only a single offense of trafficking in methamphetamine and amphetamine under paragraph (a)(3), and to remedy the prosecutor's error in charging and trying defendant for two separate offenses, the district court dismissed one of the counts before sentencing, defendant suffered a judgment of conviction and sentence for only one count, trafficking in methamphetamine. State v. Aguilar, 135 Idaho 894, 26 P.3d 1231 (Ct. App. 2001).

**Sufficiency of Information.**

In defendant's drug case, although the information might have been drafted more precisely, the information sufficiently set forth the facts essential to the offense where it alleged that on or about a specific date, in the state of Idaho, defendant knowingly manufactured methamphetamine. State v. Palmer, 138 Idaho 931, 71 P.3d 1078 (Ct. App. 2003).

**Unreasonable Sentence.**

Where prosecutor's recommended a unified sentence of fifteen years with ten years fixed

and defendant had no prior convictions for trafficking, delivery or possession with the intent to deliver a controlled substance, district court's fixed fifteen-year sentence was unreasonable and an abuse of discretion in imposing the maximum possible penalty for what was essentially an intermediate marijuana trafficking offense under this section.

*State v. Flores*, 131 Idaho 285, 955 P.2d 116 (Ct. App. 1998).

**Cited in:** *State v. Valdez-Molina*, 127 Idaho 102, 897 P.2d 993 (1995); *State v. McGough*, 129 Idaho 371, 924 P.2d 633 (Ct. App. 1996); *State v. Martinez*, 129 Idaho 411, 925 P.2d 832 (1996); *State v. Wright*, 134 Idaho 79, 996 P.2d 298 (2000).

#### RESEARCH REFERENCES

**A.L.R.** — Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases. 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases. 2 A.L.R.6th 551.

**37-2732C. Using or being under the influence — Penalties. —**

(a) Except as authorized in this chapter, it is unlawful for any person on a public roadway, on a public conveyance, on public property or on private property open to the public, to use or be under the influence of any controlled substance specified in subsection (b), (c), (d), (e) and (f) of section 37-2705, Idaho Code, or subsection (b), (c) and (d) of section 37-2707, Idaho Code, or subsection (c)(6) of section 37-2709, Idaho Code, or any narcotic drug classified in schedule III, IV or V, except when administered by or under the direction of a person licensed by the state to dispense, prescribe, or administer controlled substances. It shall be the burden of the defense to show that it comes within this exception.

(b) Any person convicted of violating the provisions of subsection (a) of this section is guilty of a misdemeanor and is punishable by imprisonment in a county jail for not more than six (6) months, or by a fine not exceeding one thousand dollars (\$1,000) or by both.

(c) Any person who is convicted of violating subsection (a) of this section, when the offense occurred within five (5) years of that person being convicted of two (2) or more separate violations of that subsection and who refuses to complete a licensed drug rehabilitation program offered by the court pursuant to subsection (d) shall be punished by imprisonment in the county jail for a mandatory minimum period of time of not less than one hundred twenty (120) days, nor more than one (1) year. The court may not reduce the mandatory minimum period of incarceration provided in this subsection.

(d) The court may, when it would be in the interest of justice, permit any person convicted of a violation of subsection (a) of this section, punishable under subsection (b) or (c) of this section, to complete a licensed drug rehabilitation program in lieu of part or all of the imprisonment in the county jail. As a condition of sentencing, the court may require the offender to pay all or a portion of the drug rehabilitation program. In order to alleviate jail overcrowding and to provide recidivist offenders with a reasonable opportunity to seek rehabilitation pursuant to this subsection, counties are encouraged to include provisions to augment licensed drug rehabilitation programs in their substance abuse proposals and applications submitted to the state for federal and state drug abuse funds.

(e) Notwithstanding subsection (a), (b) or (c) of this section, or any other provision of law to the contrary, any person who is unlawfully under the

influence of cocaine, cocaine base, methamphetamine, heroin, or phencyclidine while in the immediate personal possession of a loaded, operable firearm is guilty of a public offense and is punishable by imprisonment in the county jail or the state prison for not more than one (1) year. As used in this subsection, "immediate possession" includes, but is not limited to, the interior passenger compartment of a motor vehicle. .

(f) Every person who violates subsection (e) of this section is punishable upon the second and each subsequent conviction by imprisonment in the state prison for a period of time not in excess of four (4) years.

(g) In addition to any fine assessed under this section and notwithstanding the provisions of section 19-4705, Idaho Code, the court may, upon conviction, assess an additional cost to the defendant in the way of restitution, an amount not to exceed two hundred dollars (\$200) to the arresting and/or prosecuting agency or entity. These funds shall be remitted to the appropriate fund to offset the expense of toxicology testing.

**History.**

I.C., § 37-2732C, as added by 1996, ch. 261, 2010, ch. 117, § 6, p. 243.

§ 1, p. 857; am. 2003, ch. 185, § 4, p. 499; am.

**STATUTORY NOTES****Amendments.**

The 2010 amendment, by ch. 117, substituted "subsection (c)(6) of section 37-2709" for "subsection (c)(5) of section 37-2709" in the first sentence in subsection (a).

**Effective Dates.**

Section 6 of S.L. 1996, ch. 261 provided that §§ 1 to 4 of the act should become effective July 1, 1996 and that § 5 should become effective March 28, 1997.

**RESEARCH REFERENCES**

**A.L.R.** — Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Marijuana cases. 1 A.L.R.6th 549.

Propriety of lesser-included-offense charge in state prosecution of narcotics defendant — Cocaine cases. 2 A.L.R.6th 551.

**37-2733. Prohibited acts B — Penalties.** — (a) It is unlawful for any person:

- (1) Who is subject to article III of this act to distribute or dispense a controlled substance in violation of section 37-2722, Idaho Code;
  - (2) Who is a registrant, to manufacture a controlled substance not authorized by his registration, or to distribute or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
  - (3) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice or information required under this act;
  - (4) To refuse an entry into any premises for any inspection authorized by this act; or
  - (5) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this act for the purpose of using these substances, or which is used for keeping or selling them in violation of this act.
- (b) Any person who violates this section is guilty of a misdemeanor and

upon conviction may be imprisoned for not more than one (1) year, fined not more than twenty-five thousand dollars (\$25,000), or both.

#### **History.**

I.C., § 37-2733, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 409, § 2, p. 1195.

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

The phrase "article III of this act", in subdivision (a)(1), refers to article I of the provisions enacted by S.L. 1971, ch. 215, which are now codified as §§ 37-2701 to 37-2731.

The words "this act", in paragraphs (3), (4), and (5) in subsection (a), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-

2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

##### **Effective Dates.**

Section 5 of S.L. 1972, ch. 409, provided this act shall take effect on and after July 1, 1972.

**37-2734. Prohibited acts C — Penalties.** — (a) It is unlawful for any person knowingly or intentionally:

- (1) to distribute as a registrant a controlled substance classified in schedule I or II, except pursuant to an order form as required by section 37-2721, Idaho Code;
- (2) to use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
- (3) to acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;
- (4) to furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this act, or any record required to be kept by this act; or
- (5) to make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render the drug a counterfeit substance.

(b) Any person who violates this section is guilty of a felony and upon conviction may be imprisoned for not more than four (4) years, or fined not more than thirty thousand dollars (\$30,000), or both.

#### **History.**

I.C., § 37-2734, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 7, p. 261; am.

1972, ch. 409, § 3, p. 1195.

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

The words "this act", in subdivision (a)(iv), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751.

Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

##### **Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect on and after July 1, 1972.

Section 5 of S.L. 1972, ch. 409, provided this act shall take effect on and after July 1, 1972.

## JUDICIAL DECISIONS

**Cited in:** State v. Vivian, 129 Idaho 375, 924 P.2d 637 (Ct. App. 1996).

**37-2734A. Prohibited acts D — Penalties.** — (1) It is unlawful for any person to use, or to possess with intent to use, drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance.

(2) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia.

(3) Any person who is in violation of the provisions of subsections (1) and/or (2) of this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than one (1) year, fined not more than one thousand dollars (\$1,000), or both.

### History.

I.C., § 37-2734A, as added by 1980, ch. 388, § 2, p. 977; am. 1990, ch. 311, § 1, p. 851.

## JUDICIAL DECISIONS

### ANALYSIS

Evidence.

Lawful entry.

Possession of drug paraphernalia.

Probable cause.

Searches.

### Evidence.

Because the officer lawfully entered the bedroom to conduct a Type I protective sweep subsequent to defendant's arrest pursuant to the warrants, and upon entering the bedroom observed, in plain view, the contraband which was the basis of the criminal charges, the evidence was lawfully seized. State v. Northover, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

Evidence of defendant's prior drug use was admissible because it was not presented to show his character or to show that he acted in conformity with a particular trait of character, rather, the challenged evidence was relevant to prove the specific intent element of the charged offense of possession of drug paraphernalia. State v. Williams, 134 Idaho 590, 6 P.3d 840 (Ct. App. 2000).

### Lawful Entry.

Motion to suppress the evidence was denied

where the officer had two warrants for defendant's arrest and defendant failed to prove that the police officer's actions of entering the curtilage and looking into the lighted basement window were unreasonable. State v. Northover, 133 Idaho 655, 991 P.2d 380 (Ct. App. 1999).

Where defendant had just been found unconscious under circumstances suggesting that he was under the influence of drugs, the fact that he was declining treatment did not make unreasonable the paramedics' belief that he required further attention; therefore, the exigent circumstance had not yet dissipated when police officers entered the motel room while defendant was still on the floor with paramedics continuing to evaluate or treat him, because law enforcement officers may enter premises to seize contraband that was found in plain view by firefighters or

other emergency personnel if the exigency is continuing and the emergency personnel are still lawfully present. *State v. Bower*, 135 Idaho 554, 21 P.3d 491 (Ct. App. 2001).

Evidence of drug paraphernalia was not suppressible on the ground that the seizing officer illegally entered defendant's home because the officer did not derive this evidence from any exploitation of the unlawful entry; rather, it was found in a search incident to an arrest for battery of the officer and, thus, was not "fruit of the poisonous tree." *State v. Lusby*, 146 Idaho 506, 198 P.3d 735 (Ct. App. 2008).

#### Possession of Drug Paraphernalia.

Possession of drug paraphernalia is not a "lesser included offense" of the crime of possession of cocaine. The instruction requested by defendant on possession of paraphernalia only served to suggest a crime that could have been, but was not, directly or indirectly charged. Therefore, the court was not required to give any instruction about the crime of possession of paraphernalia. *State v. Kodesh*, 122 Idaho 756, 838 P.2d 885 (Ct. App. 1992).

#### Probable Cause.

If an officer observes a marijuana pipe in plain view, in actual or constructive possession of a person, he has probable cause to

arrest that individual for violating this section. *State v. Chambliss*, 116 Idaho 988, 783 P.2d 327 (Ct. App. 1989).

#### Searches.

It was error to deny a motion to suppress evidence of drugs under § 37-2732(c)(3) and drug paraphernalia, subsection (1) of this section, found in belongings of car passengers when driver was stopped for speeding and vehicle search was a result of officer's unreasonable extension of the traffic stop and its inherent detention. *State v. Gutierrez*, 137 Idaho 647, 51 P.3d 461 (Ct. App. 2002).

During a traffic stop of a vehicle driven by defendant, a police officer found a number of unused syringes in his pocket and a small amount of methamphetamine, another syringe, and other paraphernalia in the vehicle; defendant was not permitted to suppress the evidence as the frisk was justified by officer safety. *State v. Martin*, 146 Idaho 357, 195 P.3d 716 (Ct. App. 2008).

**Cited in:** *State v. Newman*, 108 Idaho 5, 696 P.2d 856 (1985); *State v. Morris*, 131 Idaho 562, 961 P.2d 653 (Ct. App. 1998); *State v. Chavez*, 134 Idaho 308, 1 P.3d 809 (Ct. App. 2000); *State v. Kerley*, 134 Idaho 870, 11 P.3d 489 (Ct. App. 2000).

### OPINIONS OF ATTORNEY GENERAL

Provisions of local initiatives allowing persons to use marijuana for medicinal purposes declaring that the growth and cultivation of

industrial hemp is a positive and beneficial farming activity conflict with state law and are invalid. OAG 07-02.

### RESEARCH REFERENCES

**A.L.R.** — Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R.6th 307.

**37-2734B. Prohibited acts E — Penalties.** — It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who is in violation of this section is guilty of a felony and upon conviction may be imprisoned for not more than nine (9) years, fined not more than thirty thousand dollars (\$30,000), or both.

#### History.

I.C., § 37-2734B, as added by 1980, ch. 388, § 3, p. 977.

**JUDICIAL DECISIONS****Use.**

In essence, § 37-2701(bb) [now (n)] and this section require a double-layered state of mind: Under § 37-2701 the defendant must first have marketed or designed an item with the intent that it be used with illegal drugs before his or her knowledge, or imputed knowledge, of its use by a buyer or retailer comes into play under this section; thus, so-called constructive knowledge only becomes an issue where the state proves beyond a

reasonable doubt, first, that the defendant intended to market or design items to be used to produce, store, or consume illegal drugs and then delivered, possessed with intent to deliver, or manufactured with intent to deliver such items; and it is only after the defendant has passed this threshold, that he or she is then obligated to become aware of objective facts that would fairly indicate the use for which the item was acquired. *State v. Newman*, 108 Idaho 5, 696 P.2d 856 (1985).

**RESEARCH REFERENCES**

**A.L.R.** — Construction and Application of State Drug Paraphernalia Acts. 23 A.L.R.6th 307.

**37-2734C. Prohibited Acts F — Penalties.** — (1) A person is guilty of the crime of unlawful storage of anhydrous ammonia in a container that:

- (a) Is not approved by the United States department of transportation to hold anhydrous ammonia; or
  - (b) Was not constructed to meet state and federal industrial health and safety standards for holding anhydrous ammonia.
- (2) Violation of this section is a felony.
- (3) This section does not apply to public employees or private contractors authorized to clean up and dispose of hazardous waste or toxic substances pursuant to the provisions of chapter 22, title 49, Idaho Code.
- (4) Any damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia equipment shall be the sole responsibility of the person or persons unlawfully possessing, storing or tampering with the anhydrous ammonia. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with anhydrous ammonia or anhydrous ammonia equipment extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor or seller of the anhydrous ammonia or anhydrous ammonia equipment, unless such damages arise out of the acts or omissions of the owner, installer, maintainer, designer, manufacturer, possessor or seller that constitute negligent misconduct to abide by the laws regarding anhydrous ammonia possession and storage.

**History.**

I.C., § 37-2734C, as added by 2002, ch. 257, § 3, p. 747.

**37-2735. Penalties under other laws.** — Any penalty imposed for violation of this act is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.

**History.**

I.C., § 37-2735, as added by 1971, ch. 215, § 1, p. 939.

## STATUTORY NOTES

**Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735,

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2735A. Drug hotline fee.** — In addition to any other penalties, a person convicted of a violation of this chapter shall be subject to an additional fine of ten dollars (\$10.00) to be deposited in the drug and driving while under the influence enforcement donation fund, as set forth in section 57-816, Idaho Code, to be used for the purposes designated in that section.

**History.**

I.C., § 37-2735A, as added by 2006, ch. 113, § 1, p. 308; am. 2009, ch. 108, § 4, p. 344.

## STATUTORY NOTES

**Amendments.**

The 2009 amendment, by ch. 108, inserted "and driving while under the influence."

**37-2736. Bar to prosecution.** — If a violation of this act is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state.

**History.**

I.C., § 37-2736, as added by 1971, ch. 215, § 1, p. 939.

## STATUTORY NOTES

**Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735,

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2737. Distribution to persons under age 18.** — Any person eighteen (18) years of age or over who violates section 37-2732(a), Idaho Code, by distributing any nonnarcotic drug classified in schedule I, or any controlled substance classified in schedule III, IV, V, or VI, to a person under eighteen (18) years of age who is at least three (3) years his junior is punishable by the fine authorized by section 37-2732(a)(1)(B), (C) or (D), Idaho Code, by a term of imprisonment of up to twice that authorized by section 37-2732(a)(1)(B), (C) or (D), Idaho Code, or by both.

**History.**

I.C., § 37-2737, as added by 1971, ch. 215, § 1, p. 939; am. 1990, ch. 268, § 2, p. 755.

**37-2737A. Manufacture or delivery of controlled substance where children are present.** — (1) Except as authorized in this chapter, it is unlawful for any person to manufacture or deliver, or possess with the intent to manufacture or deliver, a controlled substance as defined in schedules I, II, III and IV in this chapter, upon the same premises where a child under the age of eighteen (18) years is present.

(2) As used in this section, "premises" means any:

(a) Motor vehicle or vessel;

(b) Dwelling or rental unit including, but not limited to, apartment, townhouse, condominium, mobile home, manufactured home, motel room or hotel room;

(c) Dwelling house, its curtilage and any other outbuildings.

(3) Except as provided in subsection (4) of this section, a person who violates the provisions of this section shall be guilty of a felony and upon conviction may be imprisoned for a term not to exceed five (5) years, fined not more than five thousand dollars (\$5,000), or be both so imprisoned and fined.

(4) A person who violates the provisions of this section by manufacturing or delivering, or possessing with the intent to manufacture or deliver, methamphetamine or amphetamine in quantities as specified in section 37-2732B(a)(4), Idaho Code, shall be guilty of a felony and upon conviction may be imprisoned for a term of up to ten (10) years, fined not more than twenty-five thousand dollars (\$25,000), or be both so imprisoned and fined.

(5) Any fine imposed under the provisions of this section shall be in addition to the fine imposed for any other offense, and any term of imprisonment shall be consecutive to any term imposed for any other offense, regardless of whether the violation of the provisions of this section and any of the other offenses have arisen from the same act or transaction.

#### History.

I.C., § 37-2737A, as added by 1991, ch. 275, § 1, p. 711; am. 2006, ch. 76, § 1, p. 234.

#### STATUTORY NOTES

##### Amendments.

The 2006 amendment, by ch. 76, inserted "Except as provided in subsection (4) of this section" at the beginning of subsection (3); added present subsection (4); and redesignated former subsection (4) as present subsection (5).

##### Compiler's Notes.

Schedules I, II, III and IV, referred to in subsection (1) of this section, are compiled as §§ 37-2705, 37-2707, 37-2709 and 37-2711.

#### JUDICIAL DECISIONS

##### Not Multiple Punishments.

Defendant's sentence did not violate the statutory prohibition against multiple punishments for the same act or omission under § 18-301 (since repealed), as this section provides that the defendant's crime of manufacture or delivery of controlled substances where children were present is specifically

excepted from the § 18-301 prohibition against multiple punishment for the same act or omission. State v. Killinger, 126 Idaho 737, 890 P.2d 323 (1995).

**Cited in:** State v. Reichenberg, 128 Idaho 452, 915 P.2d 14 (1996); State v. Swader, 137 Idaho 733, 52 P.3d 878 (Ct. App. 2002).

**37-2738. Sentencing criteria in drug cases.** — (1) Any person who pleads guilty to, is found guilty of or has a judgment of conviction entered upon a violation of the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, shall be sentenced according to the criteria set forth herein.

(2) Prior to sentencing for a violation enumerated in subsection (1) of this section, the defendant shall undergo, at his own expense (or at county expense through the procedures set forth in chapters 34 and 35, title 31, Idaho Code), a substance abuse evaluation at a facility approved by the Idaho department of health and welfare. Provided however, if the defendant has no prior or pending charges under the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, and the court does not have any reason to believe that the defendant regularly abuses drugs and is in need of treatment, the court may, in its discretion, waive the evaluation with respect to sentencing for a violation of subsection (b), (c)(3), or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant. The court may also, in its discretion, waive the requirement of a substance abuse evaluation with respect to a defendant's violation of the provisions of subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, and proceed to sentence the defendant if the court has a presentence investigation report, substance abuse assessment, criminogenic risk assessment, or similar assessment which has evaluated the defendant's need for substance abuse treatment conducted within twelve (12) months preceding the date of the defendant's sentencing.

(3) In the event a substance abuse evaluation indicates the need for substance abuse treatment, the evaluation shall recommend an appropriate treatment program, together with the estimated costs thereof, and recommendations for other suitable alternative treatment programs, together with the estimated costs thereof. The person shall request that a copy of the completed evaluation be forwarded to the court. The court shall take the evaluation into consideration to determine an appropriate sentence. If a copy of the completed evaluation has not been provided to the court, the court may proceed to sentence the defendant; however, in such event it shall be presumed that substance abuse treatment is needed unless it is shown by a preponderance of evidence that treatment is not required. If the defendant has not made a good faith effort to provide the completed copy of the evaluation to the court, the court may consider the failure of the defendant to provide or report an aggravating circumstance in determining an appropriate sentence. If treatment is ordered, the person or facility performing the evaluation shall not be the person or facility that provides the treatment, unless this requirement is waived by the sentencing court, and with the exception of federally recognized Indian tribes or federal military installations where diagnoses and treatment are appropriate and available. Nothing herein contained shall preclude the use of funds authorized pursuant to the provisions of chapter 3, title 39, Idaho Code, for court ordered substance abuse treatment for indigent defendants.

(4) When sentencing an individual for the crimes enumerated in section (1) of this section, the court shall not enter a withheld judgment unless it finds by a preponderance of the evidence that:

- (a) The defendant has no prior finding of guilt for any felony, any violation of chapter 80, title 18, Idaho Code, or subsection (a), (b), (c) or (e) of section 37-2732, Idaho Code, whatsoever; and
  - (b) The sentencing court has an abiding conviction that the defendant will successfully complete the terms of probation; and
  - (c) The defendant has satisfactorily cooperated with law enforcement authorities in the prosecution of drug related crimes of which the defendant has previously had involvement.
- (5) Any person who pleads guilty to or is found guilty of a violation of the provisions of the Idaho Code identified in subsection (1) of this section shall, when granted a probationary period of any sort whatsoever, be required by the court to complete a period of not less than one hundred (100) hours of community service work.

**History.** § 2, p. 423; am. 2003, ch. 285, § 1, p. 770; am. I.C., § 37-2738, as added by 1989, ch. 174, 2004, ch. 22, § 1, p. 24.

#### STATUTORY NOTES

**Cross References.** § 37-2738, as added by 1971, ch. 215, § 1, p. Department of health and welfare, § 56-1001 et seq. 939, was repealed by S.L. 1989, ch. 174, § 1.

**Prior Laws.**

Former § 37-2738, which comprised I.C.,

#### JUDICIAL DECISIONS

##### ANALYSIS

Substance abuse evaluations.

Withheld sentence.

**Substance Abuse Evaluations.**

This section places the burden of getting a substance abuse evaluation, and providing a copy to the court, squarely on the shoulders of the defendant, but does not empower a defendant to prevent sentencing indefinitely by declining to obtain or furnish an evaluation to the court. *State v. Furlong*, 132 Idaho 526, 975 P.2d 1191 (Ct. App. 1999).

herent power" to withhold judgments then any such power conferred on the courts by the legislature may be abrogated by statute. Thus, a withheld sentence that does not meet the standards of this section is invalid and must be corrected under the state's motion. *State v. Branson*, 128 Idaho 790, 919 P.2d 319 (1996).

**Withheld Sentence.**

Since the judiciary does not have the "in-

**37-2739. Second or subsequent offenses.** — (a) Any person convicted of a second or subsequent offense under this act, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(b) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his conviction of the offense, the offender has at any time been convicted under this act or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

**History.**

I.C., § 37-2739, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 8, p. 261; am.

1990, ch. 268, § 3, p. 755.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751.

Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

**JUDICIAL DECISIONS**

**Cited in:** State v. Adams, 146 Idaho 162, 191 P.3d 240 (Ct. App. 2008).

**37-2739A. Mandatory minimum penalty.** — Any person who is convicted of violating the felony provisions of section 37-2732(a), Idaho Code, by distributing controlled substances to another person, who is not subject to a fixed minimum term under section 37-2739B, Idaho Code, and who has previously been convicted within the past ten (10) years in a court of the United States, any state or a political subdivision of one or more felony offenses of dealing, selling or trafficking in controlled substances on an occasion or occasions different from the felony violation of section 37-2732(a), Idaho Code, and which offense or offenses were punishable in such court by imprisonment in excess of one (1) year, shall be sentenced to the custody of the state board of correction for a mandatory minimum period of time of not less than three (3) years or for such greater period as the court may impose up to a maximum of life imprisonment. The mandatory minimum period of three (3) years incarceration shall not be reduced and shall run consecutively to any other sentence imposed by the court.

**History.**

I.C., § 37-2739A, as added by 1981, ch. 88, § 1, p. 122; am. 1990, ch. 268, § 4, p. 755.

**STATUTORY NOTES****Cross References.**

State board of correction, § 20-201 et seq.

**JUDICIAL DECISIONS****ANALYSIS**

Legislative intent.

Maximum sentence.

Minimum sentence.

**Legislative Intent.**

It is clear from this section that the legislature intended that mandatory minimum sentences be imposed for violations defined herein, notwithstanding the indeterminate

sentence law. State v. Way, 117 Idaho 594, 790 P.2d 375 (Ct. App. 1990).

**Maximum Sentence.**

It was not necessary for the court to resort to this section for authority to impose a life

sentence as a maximum penalty as the offense with which defendant was charged, delivery of a schedule II controlled substance, carries with it the maximum possible penalty of life imprisonment. State v. Way, 117 Idaho 594, 790 P.2d 375 (Ct. App. 1990).

case it is permissible for a sentencing court to order, under § 19-2513, a minimum period of incarceration that includes the minimum mandatory requirement of three years set forth in this section. State v. Way, 117 Idaho 594, 790 P.2d 375 (Ct. App. 1990).

#### Minimum Sentence.

When this section is applicable to a given

**37-2739B. Fixed minimum sentences in drug cases.** — (a) The legislature intends to allow fixed minimum sentences for certain aggravating factors found in cases brought under the uniform controlled substances act. The legislature hereby finds and declares that trafficking in controlled substances in the state of Idaho is a primary contributor to a societal problem that causes loss of life, personal injury and theft of property, and exacts a tremendous toll on the citizens of this state. To afford better protection to our citizens from those who traffic in controlled substances, the fixed minimum sentencing contained in subsections (b) and (c) of this section is enacted. By enacting fixed minimum sentences, the legislature does not seek to limit a court's power to impose a greater sentence pursuant to section 19-2513, Idaho Code.

(b) Any person who is found guilty of violating the provisions of section 37-2732(a)(1)(A), Idaho Code, or of any attempt or conspiracy to commit such a crime, may be sentenced to a fixed minimum term of confinement to the custody of the state board of correction, which term shall be at least five (5) years and may extend to life, for each of the following aggravating factors found by the trier of fact:

- (1) That the defendant has previously been found guilty of or convicted of a violation of section 37-2732(a)(1)(A), Idaho Code, or of an attempt or conspiracy to commit such a crime, or an offense committed in another jurisdiction which, if committed in this jurisdiction, would be punishable as a violation of section 37-2732(a)(1)(A), Idaho Code, or as an attempt or conspiracy to commit such an offense.
  - (2) That the violation occurred on or within one thousand (1,000) feet of the property of any public or private primary or secondary school, or in those portions of any building, park, stadium or other structure or grounds which were, at the time of the violation, being used for an activity sponsored by or through such a school.
  - (3) That the violation consisted of the delivery or attempted delivery of a controlled substance to a minor child under the age of eighteen (18) years.
- (c) The fixed minimum terms provided in this section may be imposed where the aggravating factors are separately charged in the information or indictment and admitted by the accused or found to be true by the trier of fact at the trial of the substantive crime; provided, however, that the prosecutor shall give notice to the defendant of intent to seek a fixed penalty at least fourteen (14) days prior to trial. During a fixed minimum term of confinement imposed under this section, the offender shall not be eligible for parole or discharge or credit or reduction of sentence for good conduct except for meritorious service. Each fixed minimum term imposed shall be served consecutively to the others, and consecutively to any minimum term of confinement imposed for the substantive offense.

(d) Any person who is found guilty of violating the provisions of section 37-2732(a)(1)(A), Idaho Code, or of any attempt or conspiracy to commit such a crime, and who is sentenced to serve at least one (1) minimum term of confinement under this section, may be fined an amount up to twice that otherwise provided for the substantive offense.

**History.**

I.C., § 37-2739B, as added by 1990, ch. 268,  
§ 1, p. 755.

**STATUTORY NOTES****Cross References.**

State board of correction, § 20-201 et seq.

**JUDICIAL DECISIONS****ANALYSIS**

Conflict with other statutes.

Construction.

Double jeopardy.

Evidence.

Mandatory confinement.

Sentence proper.

**Conflict With Other Statutes.**

Any conflict between § 18-301 (now repealed) which prohibited double punishment where a single act resulted in the commission of two or more crimes and this section which provides for a sentence enhancement for commission of a drug crime within 1000 feet of a school, must be resolved in favor of the more recent, special statute, this section. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

**Construction.**

Subsection (b)(2) of this section creates liability from two perspectives: (1) where the offense occurs on or within 1000 feet of a primary or secondary school; and (2) where the offense occurs in that portion of a building, park, stadium or other structure or grounds which was at the time of the violation being used for an activity sponsored by a primary or secondary school. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

**Double Jeopardy.**

Where defendant was charged with a single crime of possession of a controlled substance with intent to deliver subject to an enhanced penalty, § 19-1719 did not apply. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

Since the intent of the legislature in enacting this section clearly was to provide for an enhanced minimum term of confinement as a penalty upon the commission of drug offenses within 1000 feet of schools, defendant's claim, that since possession with intent to deliver a

controlled substance, § 37-2732(a)(1)(A), is a lesser included offense of possession of a controlled substance with intent to deliver within 1000 feet of a school, this section, and he was convicted of both charges he suffered multiple punishments for the same offense in violation of double jeopardy protection, must fail. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

**Evidence.**

Since information charged that defendant possessed a controlled substance with intent to deliver within 1000 feet of a private, primary or secondary school, there was no need for the state to produce any evidence with respect to the school property other than as to its location and the distance between that location and where defendant possessed the controlled substance and was not required to prove that the school was in use when he possessed the substance. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

There was sufficient evidence to support conviction of possession of controlled substance with intent to deliver within 1000 feet of a primary or secondary school where police officer testified as to measurements he had taken from the alley behind the house where the car containing the controlled substance was located to the property of the primary school and that such measurements showed that the offense was committed within 1000 feet distance set forth in the statute. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

**Mandatory Confinement.**

Where defendant pled guilty to two counts of delivery of a controlled substance and one aggravating factor for having a prior conviction for delivery of a controlled substance, the court properly sentenced defendant to a unified term of fifteen years on the first count of delivery of a controlled substance, including a fixed minimum term of five years for the prior conviction enhancement, and a unified term of fifteen years, with five years fixed, for the second count. This section requires a fixed minimum term of confinement; the district court is without power to suspend the sen-

tence, withhold judgment, or retain jurisdiction State v. Patterson, 148 Idaho 166, 219 P.3d 813 (Ct. App. 2009).

**Sentence Proper.**

Sentence for possession of a controlled substance within 1000 feet of a school of a fixed minimum term of 5 years to be served consecutively to minimum term of 60 days for the substantive offense was proper. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

**Cited in:** State v. Killinger, 126 Idaho 737, 890 P.2d 323 (1995).

**RESEARCH REFERENCES**

**A.L.R.** — Validity, Construction, and Application of State Statutes Enhancing Penalty for Sale or Possession of Controlled Sub-

stances Within Specified Distance of Playgrounds. 23 A.L.R.6th 679.

**Article V**

**37-2740. Powers of enforcement personnel.** — (a) Any peace officer, as defined by this act, may:

- (1) Carry firearms in the performance of his official duties;
  - (2) Execute and serve search warrants, arrest warrants, administrative inspection warrants, subpoenas, and summonses issued under the authority of this state;
  - (3) Make arrests without warrant for any offense under this act committed in his presence, or if he has probable cause to believe that the person to be arrested has committed or is committing a violation of this act which may constitute a felony or a misdemeanor;
  - (4) Make seizures of property pursuant to this act.
- (b) The director of the Idaho state police shall administer the state-level program of Idaho to suppress the unlawful traffic and abuse of controlled substances and shall have the authority to appoint and commission agents to enforce the provisions of this act.
- (c) All duly authorized peace officers while investigating offenses under this act in the performance of their official duties, and any person working under their immediate direction, supervision, or instruction, provided such person shall not deviate from the lawful direction of the peace officer, are immune from prosecution under this act.

**History.**

I.C., § 37-2740, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 9, p. 261; am.

1974, ch. 27, § 80, p. 811; am. 2000, ch. 469, § 87, p. 1450.

**STATUTORY NOTES****Cross References.**

Idaho state police, § 67-2901 et seq.

compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference

**Compiler's Notes.**

The words "this act", in subdivisions (a)(3) and (a)(4), refer to S.L. 1971, ch. 215, which is

should be to "this chapter", being chapter 27, title 37, Idaho Code.

The term "this act", in the introductory paragraph in subsection (a) and in subsections (b) and (c), refers to S.L. 1972, ch. 133, which is codified as §§ 37-2701, 37-2702, 37-2707, 37-2709, 37-2731, 37-2732, 37-2734, 37-2739, 37-2740, 37-2743, 37-2744, 37-2745,

and 37-2747. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

#### **Effective Dates.**

Section 14 of S.L. 1972, ch. 133 provided this act shall take effect from and after July 1, 1972.

### **JUDICIAL DECISIONS**

#### **Probable Cause.**

Where the officer was dispatched to investigate a report of suspicious activities by three men at a public rest room, the officer's way into the rest room was temporarily blocked by one of the individuals, after the officer entered, he found two other persons conversing inside a doorless toilet stall, one of the men dropped a syringe, and the officer observed

track marks on the defendant's arms as well as a cut-off soda pop can with a singed bottom, the officer had probable cause to arrest the defendant for possession of drug paraphernalia and the discovery of heroin, during a search incident to the arrest, was lawful. *State v. Montague*, 114 Idaho 319, 756 P.2d 1083 (Ct. App. 1988).

#### **37-2741. Administrative inspections and warrants. — (a)** Issuance and execution of administrative inspection warrants shall be as follows:

(1) A magistrate, within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this act or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this act or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge or magistrate and establishing the grounds for issuing the warrant. If the judge or magistrate is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

- (A) State the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;
- (B) Be directed to a person authorized by section 37-2740, Idaho Code, to execute it;
- (C) Command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;
- (D) Identify the item or types of property to be seized, if any;
- (E) Direct that it be served during normal business hours and designate the judge or magistrate to whom it shall be returned;
- (3) A warrant issued pursuant to this section must be executed and returned within ten (10) days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or

from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one (1) credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge or magistrate who has issued a warrant shall attach thereto a copy of the return and all papers returnable in connection therewith and file them with the clerk of the court in the county in which the inspection was made.

(b) The board may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

- (A) Places where persons registered or exempted from registration requirements under this act are required to keep records; and
- (B) Places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this act are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to subsection (a) of this section an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

- (A) Inspect and copy records required by this act to be kept;
- (B) Inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (b)(5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this act; and
- (C) Inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 52, title 67, Idaho Code, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

- (A) If the owner, operator, or agent in charge of the controlled premises consents;
- (B) In situations presenting imminent danger to health or safety;
- (C) In situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

- (D) In any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or  
(E) In all other situations in which a warrant is not constitutionally required;
- (5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing.

**History.**

I.C., § 37-2741, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734,

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2741A. Utility records — Inspection and copying — Wrongful disclosure.** — (a) Upon request of the attorney general or prosecuting attorney, a subpoena for the production of records of a utility may be signed and issued by a magistrate judge if there is reasonable articulable suspicion that a violation of the provisions of section 37-2732, 37-2732B, 37-2733, 37-2734 or 37-2734A, Idaho Code, has occurred or is occurring and that the records sought will materially aid in the investigation of such activity or appear reasonably calculated to lead to the discovery of information that will do so. The subpoena shall be served on the utility as in civil actions. The court may, upon motion timely made and in any event before the time specified for compliance with the subpoena, condition compliance upon advancement by the attorney general or prosecuting attorney of the reasonable costs of producing the records specified in the subpoena.

(b) A response to a subpoena issued under this section is sufficient if a copy or printout, duly authenticated by an authorized representative of the utility as a true and correct copy or printout of its records, is provided, unless otherwise provided in the subpoena for good cause shown.

(c) Except as provided in this subsection, a utility served with a subpoena under this section may disclose to the customer the fact that a subpoena seeking records relating to the customer has been served. A magistrate judge may order that the attorney general, prosecuting attorney or utility refrain from disclosing the fact that a subpoena has been served.

(d) A utility shall be reimbursed in an amount set by the court for reasonable costs incurred in providing information pursuant to the provisions of this section.

(e) The provisions of this section do not preclude the use of other legally authorized means of obtaining records, nor preclude the assertion of any legally recognized privileges or the right to seek a protective order where appropriate.

(f) Disclosure by the attorney general, county prosecuting attorney, or any peace officer or other person designated by the attorney general or the

county prosecuting attorney, of information obtained under this section, except in the proper discharge of official duties, is punishable as a misdemeanor.

(g) Upon filing of any civil or criminal action, the nondisclosure requirements of any subpoena or order under this section shall terminate, and the attorney general or prosecuting attorney filing the action shall provide copies to the defendant of all subpoenas or other orders issued under this section.

(h) A good faith reliance on a court order by a utility shall constitute a complete defense to any civil or criminal action brought against such utility under the laws of this state.

(i) The term "utility," as used herein, shall mean every corporation, association, company, partnership, sole proprietorship, business entity, person, or any municipal corporation, mutual nonprofit or cooperative corporation which provides water, gas or electrical services to members of the public, for compensation, within the state of Idaho.

(j) If an action is not filed within two (2) years and the investigation is no longer active, records obtained pursuant to this section shall be destroyed by the attorney general or prosecuting attorney.

#### History.

I.C., § 37-2741A, as added by 1989, ch. 266,

§ 2, p. 646; am. 1991, ch. 218, § 1, p. 521; am.

1994, ch. 358, § 1, p. 1125.

#### STATUTORY NOTES

##### Cross References.

Attorney general, § 67-1401 et seq.

#### JUDICIAL DECISIONS

##### ANALYSIS

##### Privacy.

Use of subpoena.

##### Privacy.

This section creates no privacy interest in utility company records. *State v. Kluss*, 125 Idaho 14, 867 P.2d 247 (Ct. App. 1993).

*v. Kluss*, 125 Idaho 14, 867 P.2d 247 (Ct. App. 1993).

##### Use of Subpoena.

Where peace officer used "other legally authorized means" to obtain orally the same information he later obtained in written form from utility company with use of a subpoena, the ICR 17(b) subpoena used was harmless in that it did not reveal any information which law enforcement had not already obtained orally. *State v. Kluss*, 125 Idaho 14, 867 P.2d 247 (Ct. App. 1993).

**Cited in:** *State v. Spor*, 134 Idaho 315, 1 P.3d 816 (Ct. App. 2000).

**37-2742. Injunctions.** — (a) The district courts have jurisdiction to restrain or enjoin violations of this act.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section.

**History.**

I.C., § 37-2742, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735,

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2743. Cooperative arrangements.** — (a) The director of the Idaho state police shall cooperate with federal and other state agencies in discharging his responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, he may:

- (1) Arrange for the exchange of information among governmental officials concerning the use and abuse of controlled substances;
- (2) Coordinate and cooperate in training programs concerning controlled substance law enforcement at local and state levels;
- (3) Cooperate with the bureau by establishing a centralized unit to accept, catalogue, file, and collect statistics, including records of drug dependent persons and other controlled substance law offenders within the state, and make the information available for federal, state and local law enforcement purposes. The name or identity of a patient or research subject whose identity could not be obtained under subsection (c) of this section shall be subject to disclosure according to chapter 3, title 9, Idaho Code;
- (4) Conduct programs of eradication aimed at destroying wild or illicit growth of plant species from which controlled substance may be extracted;
- (5) Enter into agreements with other states to coordinate and facilitate the enforcement of this act; and
- (6) Require law enforcement agencies to report such information regarding traffic in controlled substances and abuse of controlled substances as he deems necessary to enforce this act. Such reports shall be on forms supplied by the director of the Idaho state police and shall include, but not be limited to, the following information: Names, ages, sex, race, and residences of individuals involved in violations of this act; the contraband confiscated, showing the kind, location, quantity, date, and place where seized; the circumstances surrounding the arrests and a report of the disposition of charges.

(b) Results, information, and evidence received from the bureau relating to the regulatory functions of this act, including results of inspections and investigations conducted by the bureau may be relied and acted upon by the board in the exercise of its regulatory functions under this act.

(c) A practitioner engaged in medical practice or research is not required or compelled to furnish the name or identity of a patient or research subject to the director, nor may he be compelled in any state or local civil, criminal, administrative, legislative or other proceedings to furnish the name or identity of an individual that the practitioner is obligated to keep confidential and as such the name or identity of the patient or research subject is subject to disclosure according to chapter 3, title 9, Idaho Code.

**History.**

I.C., § 37-2743, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 10, p. 261;

am. 1974, ch. 27, § 81, p. 811; am. 1990, ch. 213, § 32, p. 480; am. 2000, ch. 469, § 88, p. 1450.

**STATUTORY NOTES****Cross References.**

Director of Idaho state police, § 67-2901 et seq.

**Compiler's Notes.**

The words "this act", in subsection (b), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751.

Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The term "this act", in subdivisions (a)(5) and (a)(6), refers to S.L. 1972, ch. 133, which is codified as §§ 37-2701, 37-2702, 37-2707,

37-2709, 37-2731, 37-2732, 37-2734, 37-2739, 37-2740, 37-2743, 37-2744, 37-2745, and 37-2747. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

Section 111 of S.L. 1990, ch. 213 as amended by § 16 of S.L. 1991, ch. 329 provided that §§ 3 through 45 and 48 through 110 of the act should take effect July 1, 1993 and that §§ 1, 2, 46 and 47 should take effect July 1, 1990.

**37-2744. Forfeitures. —** (a) The following are subject to forfeiture:

- (1) All controlled substances which have been manufactured, distributed, dispensed, acquired, possessed or held in violation of this act or with respect to which there has been any act by any person in violation of this act;
- (2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances or counterfeit substances in violation of this act;
- (3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) hereof;
- (4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of distribution or receipt of property described in paragraph (1) or (2) hereof, but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the security interest was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this act.

(6)(A) All moneys, currency, negotiable instruments, securities or other items easily liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other property described in paragraphs (2) and (3) hereof, found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section or which has been used or intended for use in connection with the illegal manufacture, distribution, dispensing or possession of property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section;

(B) Items described in paragraph (6)(A) above or other things of value furnished or intended to be furnished by any person in exchange for a contraband controlled substance in violation of this chapter, all proceeds, including items of property traceable to such an exchange, and all moneys or other things of value used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

(8) All simulated controlled substances, which are used or intended for use in violation of this chapter.

(9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate's division thereof, having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;

(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director, or appropriate prosecuting attorney, subject only to the orders and decrees of the district court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence.

(1) All property described in paragraphs (1), (7) and (8) of subsection (a) hereof shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

(2) When property described in paragraphs (2), (3), (4), (5) and (6) of subsection (a) hereof is seized pursuant to this section, forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such property is seized. The procedure governing such proceedings shall be the same as that prescribed for civil proceedings by the Idaho Rules of Civil Procedure. The court shall order the property forfeited to the director, or appropriate prosecuting attorney, if he determines that such property was used, or intended for use, in violation of this chapter, or, in the case of items described in paragraph (6)(A) of subsection (a), was found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section.

(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such conveyance is seized.

(A) Notice of forfeiture proceedings shall be given each owner or party in interest who has a right, title, or interest which in the case of a conveyance shall be determined by the record in the Idaho transportation department or a similar department of another state if the records are maintained in that state, by serving a copy of the complaint and summons according to one (1) of the following methods:

(I) Upon each owner or party in interest by mailing a copy of the complaint and summons by certified mail to the address as given upon the records of the appropriate department.

(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a verified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30)

days therefrom; and the proceeding shall have priority over other civil cases.

(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a)(4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor. The court may order payment of all costs incurred by the state or law enforcement agency as a result of such seizure.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated;

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mortgagee of the conveyance, if any, up to the value of his interest in the conveyance.

2. The balance, if any, in the following order:

- A. To the director, or appropriate prosecuting attorney, for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

- B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investiga-

tion, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public.

The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

(A) To the director, or prosecuting attorney on behalf of the county or city law enforcement agency, for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, maintenance, storage or transportation, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this act.

(C) The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local agency's drug enforcement donation fund.

(3) Take custody of the property and remove it for disposition in accordance with law; or

(f)(1) The director or any peace officer of this state seizing any of the property described in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency, or person having custody of the same to the director to be destroyed pursuant to paragraph (2) hereof. The property shall be accompanied with a written inventory on forms furnished by the director.

(2) All property described in paragraphs (1) and (2) of subsection (a) which is seized or surrendered under the provisions of this act may be destroyed after all legal actions have been exhausted. The destruction shall be done under the supervision of the supervisory drug analyst of the Idaho state police, a representative of the office of the director and a representative of the state board of pharmacy. An official record listing the property destroyed and the location of destruction shall be kept on file at the office of the director. Except, however, that the director of the Idaho state police or his designee may authorize the destruction of drug or nondrug evidence, or store those items at government expense when, in the opinion of the director or his designee, it is not reasonable to remove or transport such items from the location of the seizure for destruction. In such case, a representative sample will be removed and preserved for evidentiary purposes and, when practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the director or his designee who shall make a record of the destruction.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) hereof.

#### **History.**

I.C., § 37-2744, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 11, p. 261; am. 1972, ch. 409, § 4, p. 1195; am. 1974, ch. 27, § 82, p. 811; am. 1980, ch. 388, § 4, p. 977; am. 1982, ch. 265, § 1, p. 680; am. 1983, ch. 218, § 3, p. 599; am. 1986, ch. 286, § 2, p.

709; am. 1988, ch. 47, § 3, p. 54; am. 1990, ch. 239, § 1, p. 676; am. 1990, ch. 312, § 1, p. 852; am. 1992, ch. 174, § 1, p. 546; am. 1994, ch. 285, § 1, p. 893; am. 1994, ch. 286, § 1, p. 893; am. 1999, ch. 218, § 1, p. 578; am. 2000, ch. 469, § 89, p. 1450; am. 2009, ch. 108, § 5, p. 344.

#### **STATUTORY NOTES**

##### **Cross References.**

Drug and driving while under the influence enforcement donation fund, § 57-816.

Idaho state police, § 67-2901 et seq.

Idaho transportation department, § 40-501 et seq.

##### **Amendments.**

This section was amended by two 1994 acts which appear to be compatible and have been compiled together.

Both 1994 amendments substituted "lienholder" for "lien holder" throughout subsection (d)(3)(D)(IV), in subsection (e)(2)(A) substituted "including, but not limited to," for

"including but not limited to" and in the first sentence of subsection (f)(2) inserted "the" following "surrendered under".

The 1994 amendment, by ch. 285, § 1, also added subsection (a)(9).

The 1994 amendment, by ch. 286, § 1, also inserted "or appropriate prosecuting attorney" following "director" throughout the section; in paragraph (d)(3)(D)(IV)(ii)2.C., added "or to the appropriate prosecuting attorney for credit to the local drug enforcement donation account, or its equivalent.", in subsection (e)(2)(A) substituted "prosecuting attorney on behalf of the" for "by the director, to his agent"

following "To the director or"; and deleted former paragraph (e)(4) which read "Upon the recommendation of the director only, the court may order property forfeited, in whole or in part, to a city or county the law enforcement agency of which participated in the events leading to the seizure of the property. Upon such order, the city or county shall use the property for drug enforcement purposes consistent with this act."

The 2009 amendment, by ch. 108, in subsections (d)(3)(D)(IV)(ii)2C. and (e)(2)(C), inserted "and driving while under the influence."

#### **Compiler's Notes.**

The words "this act", in subsection (a), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The term "this act", in subsections (d) and (e), refers to S.L. 1972, ch. 133, which is codified as §§ 37-2701, 37-2702, 37-2707, 37-2709, 37-2731, 37-2732, 37-2734, 37-2739, 37-2740, 37-2743, 37-2744, 37-2745, and 37-2747. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code

Section 5 of S.L. 1980, ch. 388 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

#### **Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

Section 5 of S.L. 1972, ch. 409, provided this act shall take effect on and after July 1, 1972.

Section 2 of S.L. 1999, ch. 218 declared an emergency. Approved March 23, 1999.

## **JUDICIAL DECISIONS**

### **ANALYSIS**

Applicability of rules of civil procedure.

Construction.

Currency.

Double jeopardy.

Entrapment defense.

Exclusionary rule.

Illegal seizure.

Priority for forfeitures.

Seizure by state.

Standard of proof.

#### **Applicability of Rules of Civil Procedure.**

A forfeiture proceeding pursuant to this section is a civil action prosecuted against the seized property; generally, the responding claimant challenging the forfeiture action is the owner of the seized property and, with the exception of special procedural rules directing the manner in which notice is given and the appropriate manner for a claimant to respond, the Idaho Rules of Civil Procedure apply to forfeiture proceedings. Richardson v. One 1972 GMC Pickup, 121 Idaho 599, 826 P.2d 1311 (1992).

Where Idaho department of law enforcement (department) brought action against defendant for forfeiture of defendant's personal property under this section, after entry of judgment against defendant and prior to defendant's motion to set aside the judgment, the property was transferred to the county; since the civil forfeiture statutes did not authorize the department to bring a forfeiture action in its own name as representative of,

and for the benefit of another governmental entity and as forfeiture proceedings were governed by Idaho R. Civ. P. 17(a), forfeiture actions must be prosecuted in the name of the real party in interest, which in this case was the county. As such, in the event of reversal of the forfeiture judgment and remand to the district court, the county could be joined as a party plaintiff pursuant to Idaho R. Civ. P. 19(a)(1) and the department's argument that defendant's appeal should be dismissed as moot as the property of the action was no longer in the department's control would be obviated by proper pleading. State Dep't of Law Enforcement ex rel. Cade v. One 1990 Geo Metro, 126 Idaho 675, 889 P.2d 109 (Ct. App. 1995).

#### **Construction.**

Since the legislature may have intended to provide the state with a 30-day period, under this section, to prepare its case, a literal reading of the requirement of subdivision (d)(3)(D) of this section requiring a hearing to be set not "less" than 30 days after filing a

verified answer would not necessarily be irrational or absurd and the provision must be interpreted as written. State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979).

In context of criminal forfeiture, the words "such violation" in § 37-2801(2), plainly refer to the specific violation of which a defendant has been found guilty; in this respect, § 37-2801(2), which is a criminal forfeiture statute, differs significantly from the civil forfeiture provision within this section. State v. Stevens, 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004).

Prohibition of excessive fines under U.S. Const. amend. VIII limits forfeitures made pursuant to this section. Nez Perce County Prosecuting Atty. v. Reese, 142 Idaho 893, 136 P.3d 364 (Ct. App. 2006).

#### Currency.

Where forfeiture of currency required findings both of close proximity to controlled substances and use or intention for use in violation of law, a forfeiture judgment based solely on a finding of proximity was error, and the action was remanded for further findings. State ex rel. Rooney v. One 1977 Subaru Two Door, 114 Idaho 43, 753 P.2d 254 (1988) (decision prior to 1986 amendment).

#### Double Jeopardy.

In light of recent precedent from the United States supreme court, this section does not create forfeiture proceedings which are criminal in nature or which result in punishment for double jeopardy. State v. McGough, 129 Idaho 371, 924 P.2d 633 (Ct. App. 1996).

Because the U.S. supreme court recently determined that civil forfeitures in general, and specifically in cases involving money laundering and drug statutes, do not constitute "punishment" for purposes of the double jeopardy clause, there was no double jeopardy attached to defendant's convictions and sentences for delivery of controlled substance, money laundering, and failure to pay income tax and the prior forfeiture of his property under this section. State v. Ross, 129 Idaho 380, 924 P.2d 1224 (1996).

Defendant's conviction for possession of a controlled substance with intent to deliver was not barred by the doctrine of double jeopardy due to the prior civil forfeiture of his property in an action brought under this section, since the United States supreme court in *United States v. Ursery*, 116 S. Ct. 2135, 135 L. Ed. 2d 549 (1996) declared that civil forfeiture in general, and specifically in cases involving drug statutes, do not constitute punishment for purposes of double jeopardy. State v. Ayala, 129 Idaho 911, 935 P.2d 174 (Ct. App. 1996).

#### Entrapment Defense.

The entrapment defense may be asserted in a civil forfeiture proceeding which is predi-

cated on the commission of a crime for which entrapment is a defense. Cade v. One 1987 Dodge Lancer Shelby 4-door, VIN 1B3BX68E3HN435087, 125 Idaho 731, 874 P.2d 542 (1994).

#### Exclusionary Rule.

Given the important policies served by § 19-4409 and the quasi-penal nature of forfeiture proceedings, the exclusionary rule for violations of § 19-4409, first adopted in *State v. Rauch*, 99 Idaho 586, 586 P.2d 671 (1978), extends to forfeiture actions brought under the authority of this section. Richardson v. Four Thousand Five Hundred Forty-Three Dollars, United States Currency, 120 Idaho 220, 814 P.2d 952 (Ct. App. 1991).

#### Illegal Seizure.

The mere fact that property is seized illegally does not immunize it from forfeiture. Although evidence which is the product of the seizure must be excluded at trial, the state may pursue a forfeiture claim if it can show that the property is subject to forfeiture with evidence which is not tainted by the illegal seizure. Richardson v. Four Thousand Five Hundred Forty-Three Dollars, United States Currency, 120 Idaho 220, 814 P.2d 952 (Ct. App. 1991).

#### Priority for Forfeitures.

In the absence of a showing of substantial prejudice, a complaint seeking forfeiture of a vehicle should not be dismissed merely because it was not given priority over other civil cases, if in fact such priority was not given. State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979).

The provision of subdivision (d)(3)(D) of this section that a forfeiture proceeding be given priority over other civil cases was intended to be directory and not mandatory. State, Dep't of Law Enforcement v. One 1955 Willys Jeep, 100 Idaho 150, 595 P.2d 299 (1979).

#### Seizure by State.

Once the state has seized property pursuant to this section, a third party cannot get a lien interest in the seized property which is protected by this section. State ex rel. Rooney v. One 1974 Green Targa Porsche Auto., 112 Idaho 432, 732 P.2d 670 (1986).

In 1986 the legislature amended this section adopting what appears to be a "per se" rule of mandatory forfeiture of money or property found in close proximity to contraband controlled substances, without the necessity of finding that the money was used or intended for use in violation of the act. State ex rel. Rooney v. One 1977 Subaru Two Door, 114 Idaho 43, 753 P.2d 254 (1988).

#### Standard of Proof.

This section provides that forfeiture proceedings are civil actions against the property

subject to forfeiture which are governed by the Idaho Rules of Civil Procedure and that the standard of proof applied is the preponderance of the evidence. Idaho Dep't of Law Enforcement ex rel. Richardson v. \$34,000 United States Currency, 121 Idaho 211, 824 P.2d 142 (Ct. App. 1991).

Where a claimant's motor home and a travel trailer were forfeited based on the nature of marijuana-growing operation, the claimant's culpability, and the connection between the conveyances and the operation, a finding that the forfeiture was not disproportionate to the claimant's drug trafficking offense was improper since the proportionality analysis failed to consider the monetary value

of the conveyances and their character as the residence of the claimant and the claimant's spouse, economic hardship to the claimant and third parties, penalties authorized by the legislature, and factors for determining the gravity of the claimant's offense. Nez Perce County Prosecuting Atty. v. Reese, 142 Idaho 893, 136 P.3d 364 (Ct. App. 2006).

**Cited in:** State v. Kellogg, 100 Idaho 483, 600 P.2d 787 (1979); State v. Newman, 108 Idaho 5, 696 P.2d 856 (1985); State v. Pardo, 109 Idaho 1036, 712 P.2d 737 (Ct. App. 1985); Blewett v. Klauser, 129 Idaho 612, 930 P.2d 1357 (1997).

#### RESEARCH REFERENCES

**A.L.R.** — Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Explanation or lack thereof. 4 A.L.R.6th 113.

Evidence Considered in Tracing Currency, Bank Account, or Cash Equivalent to Illegal Drug Trafficking so as to Permit Forfeiture, or Declaration as Contraband, Under State Law — Amount and Packaging of Money and Drugs. 34 A.L.R.6th 539.

**37-2744A. Real property subject to forfeiture.** — (a) Any real property, including any interest therein and any appurtenances thereto or improvements thereon, which is used in any manner or part, to commit or to facilitate the commission of a violation of the provisions of this chapter punishable by more than one (1) year of imprisonment, shall be subject to forfeiture under the provisions of this section.

(b) Property subject to forfeiture under the provisions of this section may be seized by the director upon determining that a parcel of property is subject to forfeiture, by filing a notice of forfeiture with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided, however, that in the event the property sought to be forfeited is part of a greater parcel, the director may, for the purposes of this notice, use the legal description of the greater parcel. The director shall also send by certified mail a copy of the notice of forfeiture to any persons holding a recorded interest or of whose interest the director has actual knowledge. The director shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The owner or party in lawful possession of the property sought to be forfeited may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(c) In the event of a seizure pursuant to subsection (a) of this section, a complaint instituting forfeiture proceedings under subsection (d) of this section shall be filed in the district court in the county in which the real property is situated within ninety (90) days of the date of seizure. The complaint shall be served in the same manner as other complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(d) Real property sought to be forfeited under the provisions of this section shall not be subject to an action for detainer or any other collateral action, but is deemed to be in the custody of the director subject only to the orders and decrees of the district court having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil proceedings in which the burden of proof shall be on the director to prove by a preponderance of the evidence that the property sought to be forfeited is subject to forfeiture. Upon being satisfied that an owner or claimant as defined in paragraph (4) of this subsection should not be subjected to forfeiture because that person had no knowledge or reason to believe that the real property was being used or had been used for the purposes alleged by the department, the director shall release the property to the owner or other claimant. The procedure applicable to such cases shall be the same as that prescribed by the Idaho rules of civil procedure. Following service the director may, where appropriate, seek default judgment pursuant to the Idaho rules of civil procedure. If an answer is filed the court shall proceed to set the case for hearing before the court without a jury.

(1) Following the hearing, if the court finds that the property is subject to forfeiture pursuant to subsection (a) of this section the court shall order the property forfeited to the director and title shall vest as of the date of the original seizure.

(2) Following the hearing, if the court finds that the property is not subject to forfeiture pursuant to subsection (a) of this section, the court shall order the property released to the owner or owners thereof.

(3) Any owner who has an answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of this section. If the court finds that the property was not used in violation of the provisions of this section or is not subject to forfeiture under the provisions of this section, the court shall order the property released to the owner.

(4) An owner, co-owner or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged by the department;

(A) In the event of such proof, the court shall order the real property released to the innocent owner, purchaser, lienholder or mortgagee.

(B) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the director. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent owner, purchaser or mortgagee of the real property, if any, up to the value of his interest in the real property.

(ii) The balance, if any, in the following order:

1. To the director for all expenditures made or incurred by the department in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for

all expenditures made or incurred by the department in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the director for credit to the drug [and driving while under the influence] enforcement donation account.

(C) In any case, the director may, within thirty (30) days after judgment, pay the balance due to the innocent owner, purchaser, lienholder or mortgagee and thereby purchase the real property for use in the enforcement of this act.

(e) In issuing any order under the provisions of this section, the court shall make a determination that the property, or a portion thereof, was actually used in violation of the provisions of this act. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this section.

(f) When property is forfeited under the provisions of this section the director may:

(1) Retain it for official use; or

(2) Sell the property in a commercially reasonable manner. The proceeds shall be distributed by the director as follows:

(A) To reimburse for all expenditures made or incurred in connection with the sale, including expenditures for any necessary repairs or maintenance, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for attorneys' fees, title company fees, insurance premiums, recording costs, witnesses' fees, reporters' fees, transcripts, printing, travel and investigation.

(B) The remainder, if any, shall be credited to the drug [and driving while under the influence] enforcement donation account.

(3) Recommend to the court that the property, or proceeds thereof, be forfeited in whole or in part to a city or county, the law enforcement agency of which participated in the events leading to the seizure of the property or proceeds. Property distributed pursuant to this recommendation shall be used by the city or county for purposes consistent with the provisions of this chapter.

#### **History.**

I.C., § 37-2744A, as added by 1989, ch. 341, § 2, p. 862; am. 1994, ch. 395, § 1, p. 1250.

#### **STATUTORY NOTES**

##### **Compiler's Notes.**

Former § 37-2744A was amended and redesignated as § 37-2744B by § 1 of S.L. 1989, ch. 341.

The bracketed insertions in subdivisions (d)(4)(B)(ii)(2) and (f)(2)(B) were added by the

compiler to correct the name of the referenced account.

The term "this act" in this section refers to S.L. 1989, ch. 341, which is codified as §§ 37-2744A and 37-2744B.

**JUDICIAL DECISIONS****ANALYSIS**

Attorney fees.  
Defenses not shown.  
Excessiveness.  
Reasonable basis in fact.  
Right to jury trial.

**Attorney Fees.**

This section does not, in and of itself, provide for an award of attorney fees. Idaho Dep't of Law Enforcement ex rel. Cade v. Kluss, 125 Idaho 682, 873 P.2d 1336 (1994).

Section 12-117 provides statutory authority on which to base an award of attorney fees in a real property forfeiture action brought by the department of law enforcement pursuant to this section. Idaho Dep't of Law Enforcement ex rel. Cade v. Kluss, 125 Idaho 682, 873 P.2d 1336 (1994).

**Defenses Not Shown.**

In a forfeiture proceeding, district court properly refused to set aside a default judgment in favor of the Idaho state police, because, even though excusable neglect or a mistake of fact was shown by an attorney's lack of action, no meritorious defense was pleaded or shown. Idaho State Police v. Real Prop., 144 Idaho 60, 156 P.3d 561 (2007).

**Excessiveness.**

The excessive fines clause of the Eighth Amendment applies to in rem forfeitures made pursuant to this section. Idaho Dep't of Law Enforcement ex rel Cade v. Real Property Located in Minidoka County, 126 Idaho 422, 885 P.2d 381 (1994).

The fact that subsection (e) of this section purports to limit the size of a property which could be taken does not preclude the possibility that the property actually taken could constitute an excessive fine under the Eighth Amendment; subsection (e) cannot shield the

forfeiture from Eighth Amendment review. Idaho Dep't of Law Enforcement ex rel Cade v. Real Property Located in Minidoka County, 126 Idaho 422, 885 P.2d 381 (1994).

The mere fact that the real property taken under this section is not divisible does not preclude the possibility that the forfeiture is excessive. Idaho Dep't of Law Enforcement ex rel Cade v. Real Property Located in Minidoka County, 126 Idaho 422, 885 P.2d 381 (1994).

Where the excessiveness of property forfeiture is at issue, one possible measure of an in rem forfeiture's excessiveness could be the relationship between the forfeited property and the offense. Idaho Dep't of Law Enforcement ex rel Cade v. Real Property Located in Minidoka County, 126 Idaho 422, 885 P.2d 381 (1994).

**Reasonable Basis in Fact.**

There was substantial and competent evidence to support the district court's finding that the department of law enforcement acted without a reasonable basis in fact or law when it filed a second notice of seizure against owner's property. Idaho Dep't of Law Enforcement ex rel. Cade v. Kluss, 125 Idaho 682, 873 P.2d 1336 (1994).

**Right to jury trial.**

There is a right to jury trial for forfeiture proceedings under this section because that right existed at common law when the Idaho Constitution was adopted; to the extent that this section denies such right, it is unconstitutional. Idaho Dep't of Law Enforcement ex rel Cade v. Real Property Located in Minidoka County, 126 Idaho 422, 885 P.2d 381 (1994).

**RESEARCH REFERENCES**

**A.L.R.** — Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfei-

ture, or declaration as contraband, under state law — Explanation or lack thereof. 4 A.L.R.6th 113.

**37-2744B. Authorization to receive and administer federal forfeitures and private donations.** — The director of the Idaho state police is authorized to receive and dispose of any real or personal property which has been seized by a federal drug enforcement agency, or any donations from private citizens, the proceeds of which shall be placed in the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

**History.**

I.C., § 37-2744A, as added by 1986, ch. 286, § 3, p. 709; am. and redesig. 1989, ch. 341,

§ 1, p. 862; am. 2000, ch. 469, § 90, p. 1450; am. 2010, ch. 79, § 13, p. 133.

**STATUTORY NOTES****Cross References.**

Idaho state police, § 67-2901 et seq.

**Amendments.**

The 2010 amendment, by ch. 79, inserted "and driving while under the influence."

**Compiler's Notes.**

This section was formerly compiled as § 37-2744A.

Section 4 of S.L. 1986, ch. 286 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**37-2745. Burden of proof — Liabilities.** — (a) It is not necessary for the state to negate any exemption or exception in this act in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding under the provisions of this act. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration, valid prescription, or order form issued under the provisions of this act, he is presumed not to be the holder of the registration, valid prescription or form. The burden of proof is upon him to rebut the presumption.

(c) In all prosecutions under the provisions of this act involving the analysis of a controlled substance or a sample thereof, a certified copy of the analytical report with the notarized signature of the bureau chief of the Idaho forensic laboratory and the criminalist who conducted the analysis shall be accepted as *prima facie* evidence of the results of the analytical findings.

(d) Notwithstanding any statute or rule to the contrary, the defendant may subpoena the criminalist to testify at the preliminary hearing and trial of the issue at no cost to the defendant.

(e) No liability is imposed under the provisions of this act upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties.

**History.**

I.C., § 37-2745, as added by 1971, ch. 215,

§ 1, p. 939; am. 1972, ch. 133, § 12, p. 261; am. 1993, ch. 158, § 1, p. 408.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in subsections (a), (b), and (e), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

The term "this act" in subsection (c) refers to S.L. 1993, ch. 158, which is codified as this section. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

**JUDICIAL DECISIONS****ANALYSIS**

Constitutionality.  
Entrapment.  
Instruction.

**Constitutionality.**

This section does not unconstitutionally shift the burden of proof of an element of the crime to the defendant because lack of authority to deliver a controlled substance is not an element of the crime. State v. Nab, 113 Idaho 168, 742 P.2d 423 (Ct. App.), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

**Entrapment.**

Requested instruction on entrapment defense was properly denied when defendant offered no substantial evidence linking informant's supposedly violent nature and coercive method of operation to the defendant. State v. Totten, 99 Idaho 117, 577 P.2d 1165 (1978).

**Instruction.**

Instruction which created a mandatory presumption that defendant did not have authority to deliver the controlled substance and placed the burden of proof on the defendant without informing the jury of the quantum of evidence required to meet that burden was erroneous, but harmless, where the defendant's defense was that he did not deliver a controlled substance, and his authority to do so was not at issue. State v. Nab, 113 Idaho 168, 742 P.2d 423 (Ct. App.), cert. denied, 116 Idaho 466, 776 P.2d 828 (1988).

**Cited in:** State v. Collinsworth, 96 Idaho 910, 539 P.2d 263 (1975).

**RESEARCH REFERENCES**

**A.L.R.** — Burden of proof and presumptions in tracing currency, bank account, or cash equivalent to illegal drug trafficking so

as to permit forfeiture, or declaration as contraband, under state law. 104 A.L.R.5th 229.

**37-2746. Judicial review.** — All final determinations, findings and conclusions of the board under this act are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the district court of the county where the aggrieved person resides. Findings of fact by the board, if supported by substantial evidence, are conclusive.

**History.**

I.C., § 37-2746, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735,

37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2747. Education and research.** — (a) The director or his authorized agent shall carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs he may:

- (1) Promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;
- (2) Assist the regulated industry and interested groups and organizations

- in contributing to the reduction of misuse and abuse of controlled substances;
- (3) Consult with interested groups and organizations to aid them in solving administrative and organizational problems;
- (4) Evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;
- (5) Disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and
- (6) Assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.
- (b) The director shall encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this act, he may:
- (1) Establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;
- (2) Make studies and undertake programs of research to:
- (A) Develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this act;
- (B) Determine patterns of misuse and abuse of controlled substances and the social effects thereof; and
- (C) Improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and
- (3) Enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.
- (c) The director may enter into contracts for educational and research activities without performance bonds.
- (d) The director may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.
- (e) The director may authorize the possession and distribution of controlled substances by persons lawfully engaged in education and research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization.

**History.**

I.C., § 37-2747, as added by 1971, ch. 215,

§ 1, p. 939; am. 1972, ch. 133, § 13, p. 261; am. 1974, ch. 27, § 83, p. 811.

**STATUTORY NOTES****Compiler's Notes.**

The words "this act", in subsection (b), refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**Effective Dates.**

Section 14 of S.L. 1972, ch. 133, provided this act shall take effect from and after July 1, 1972.

Section 196 of S.L. 1974, ch. 27 provided the act should be in full force and effect on and after July 1, 1974.

**JUDICIAL DECISIONS**

**Cited in:** State v. Pontier, 95 Idaho 707, 518 P.2d 969 (1974).

**Article VI**

**37-2748. Pending proceedings.** — (a) Prosecution for any violation of law occurring prior to the effective date of this act is not affected or abated by this act. If the offense being prosecuted is similar to one set out in article IV of this act, then the penalties under article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to the effective date of this act are not affected by this act.

(c) All administrative proceedings pending under prior laws which are superseded by this act shall be continued and brought to a final determination in accord with the laws and rules in effect prior to the effective date of this act. Any substance controlled under prior law which is not listed within schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The board shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to the effective date of this act and who are registered or licensed by the state.

(e) This act applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following its effective date.

**History.**

I.C., § 37-2748, as added by 1971, ch. 215, § 1, p. 939.

**STATUTORY NOTES****Compiler's Notes.**

The phrase "effective date of this act" refers

to the effective date of S.L. 1971, ch. 215, which was May 1, 1971.

**JUDICIAL DECISIONS**

**Cited in:** State v. Musquiz, 96 Idaho 105, 524 P.2d 1077 (1974).

**37-2749. Continuation of rules.** — Any orders and rules promulgated under any law affected by this act and in effect on the effective date of this act and not in conflict with it continue in effect until modified, superseded or repealed.

**History.**

I.C., § 37-2749, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES**

**Compiler's Notes.**

The phrase "effective date of this act" refers

to the effective date of S.L. 1971, ch. 215, which was May 1, 1971.

**37-2750. Uniformity of interpretation.** — This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it.

**History.**

I.C., § 37-2750, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751.

Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

**37-2751. Short title.** — This act may be cited as the "Uniform Controlled Substances Act."

**History.**

I.C., § 37-2751, as added by 1971, ch. 215,  
§ 1, p. 939.

**STATUTORY NOTES**

**Compiler's Notes.**

The words "this act", in this section, refer to S.L. 1971, ch. 215, which is compiled as §§ 37-2701 to 37-2713, 37-2714 to 37-2724, 37-2731, 37-2732, 37-2733, 37-2734, 37-2735, 37-2736, 37-2737, 37-2739, 37-2740, 37-2741, 37-2742 to 37-2744, and 37-2745 to 37-2751. Probably the reference should be to "this chapter", being chapter 27, title 37, Idaho Code.

Section 2 of S.L. 1971, ch. 215, read: "If any provision of this act or the application thereof

to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable."

**Effective Dates.**

Section 4 of S.L. 1971, ch. 215, provided the act should be in full force and effect on and after May 1, 1971.

## CHAPTER 28

### CRIMINAL FORFEITURES

**SECTION.**

- 37-2801. Property subject to criminal forfeiture.  
 37-2802. Property subject to forfeiture.  
 37-2803. Inventory.  
 37-2804. Forfeiture request — Rebuttable presumption.  
 37-2805. Preservation of property — Warrant of seizure — Protective orders.  
 37-2806. Institution of proceedings — Third parties.

**SECTION.**

- 37-2807. Personal property — Rights of third parties.  
 37-2808. Real property — Rights of third parties.  
 37-2809. Proportionality.  
 37-2810. Authority of the attorney general.  
 37-2811. Bar on intervention.  
 37-2812. Jurisdiction — Depositions.  
 37-2813. Disposition of property.  
 37-2814. Forfeiture of substitute property.  
 37-2815. Construction.

**37-2801. Property subject to criminal forfeiture.** — Any person who is found guilty of, who enters a plea of guilty, or who is convicted of a violation of the uniform controlled substances act, chapter 27, title 37, Idaho Code, punishable by imprisonment for more than one (1) year, no matter the form of the judgment or order withholding judgment, shall forfeit to the state of Idaho:

(1) Any property constituting, or derived from, any proceeds the person obtained, directly or indirectly, as the result of such violation; and

(2) Any of the person's property used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of such violation. The court, in imposing sentence on such person, shall order, in addition to any other sentence imposed pursuant to chapter 27, title 37, Idaho Code, that the person forfeit to the state of Idaho all property described in this section. The provisions of this chapter shall not be construed or interpreted in any manner to prevent the state of Idaho, attorney general or the appropriate prosecuting attorney from requesting restitution pursuant to section 37-2732(k), Idaho Code; or, if appropriate, from pursuing civil forfeiture pursuant to section 37-2744 and/or section 37-2744A, Idaho Code. Nor shall an order of forfeiture pursuant to this chapter be used as an offset against, or in any manner be used to diminish the amount of, a restitution order under section 37-2732(k), Idaho Code. The issue of criminal forfeiture shall be for the court alone, without submission to a jury, as a part of the sentencing procedure within the criminal action.

**History.**

I.C., § 37-2801, as added by 1996, ch. 230,  
 § 1, p. 749.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

**Prior Laws.**

Former §§ 37-2801 to 37-2807, which com-

prised S.L. 1967, ch. 435, §§ 61, 79 to 2, 84, 85, p. 1436, were repealed by S.L. 1971, ch. 215, § 3.

**JUDICIAL DECISIONS****ANALYSIS**

**Construction.**  
Forfeiture improper.

**Construction.**

In context of criminal forfeiture, the words "such violation", in subsection (2), plainly refer to the specific violation of which a defendant has been found guilty; in this respect, subsection (2), which is a criminal forfeiture statute, differs significantly from the civil forfeiture provision, § 37-2744. State v. Stevens, 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004).

**Forfeiture Improper.**

Trial court erred in ordering the forfeiture

of defendant's motorcycle as part of his conviction for trafficking in 28 grams or more of methamphetamine, a violation of § 37-2732B(a)(4)(A), where no drugs were found in the motorcycle, and there was no evidence that defendant had previously used it to obtain the drugs he possessed when arrested or that it facilitated the offense for which he was convicted. State v. Stevens, 139 Idaho 670, 84 P.3d 1038 (Ct. App. 2004).

**RESEARCH REFERENCES**

**A.L.R.** — Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Explanation or lack thereof. 4 A.L.R.6th 113.

Evidence Considered in Tracing Currency, Bank Account, or Cash Equivalent to Illegal Drug Trafficking so as to Permit Forfeiture, or Declaration as Contraband, Under State Law — Amount and Packaging of Money and Drugs. 34 A.L.R.6th 539.

**37-2802. Property subject to forfeiture.** — "Property" subject to criminal forfeiture under this chapter includes:

- (1) Real property, including things growing on, affixed to, or found on the land; and
- (2) Tangible and intangible personal property, including rights, privileges, interests, claims and securities.

**History.**

I.C., § 37-2802, as added by 1996, ch. 230,  
§ 1, p. 749.

**RESEARCH REFERENCES**

**A.L.R.** — Evidence considered in tracing currency, bank account, or cash equivalent to illegal drug trafficking so as to permit forfeiture, or declaration as contraband, under state law — Explanation or lack thereof. 4 A.L.R.6th 113.

Evidence Considered in Tracing Currency, Bank Account, or Cash Equivalent to Illegal Drug Trafficking so as to Permit Forfeiture, or Declaration as Contraband, Under State Law — Amount and Packaging of Money and Drugs. 34 A.L.R.6th 539.

**37-2803. Inventory.** — Any peace officer of this state seizing property subject to forfeiture under the provisions of this chapter shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted. A copy of the inventory shall be sent, within five (5) days of the seizure, to the director of the Idaho state police. Upon completion of the forfeiture action pursuant to this chapter, a final inventory shall be made which indicates the disposition of the seized property, and a copy of that inventory shall also be sent to the director of the Idaho state police.

**History.**

I.C., § 37-2803, as added by 1996, ch. 230,  
§ 1, p. 749; am. 2000, ch. 469, § 91, p. 1450.

**STATUTORY NOTES****Cross References.**

Director of Idaho state police, § 67-2901 et seq.

**37-2804. Forfeiture request — Rebuttable presumption.** — Property subject to criminal forfeiture under this chapter shall not be ordered forfeited unless the attorney general or the appropriate prosecuting attorney has filed a separate allegation within the criminal proceeding seeking forfeiture of specific property as described in section 37-2801, Idaho Code. The attorney general or appropriate prosecuting attorney shall file, within fourteen (14) days of the filing of the criminal information or indictment, a separate part II forfeiture request and notice with the trial court.

There is a rebuttable presumption that any property of a person subject to the provisions of section 37-2801, Idaho Code, is subject to forfeiture under this chapter if the state of Idaho establishes by a preponderance of the evidence that:

- (1) The property was acquired by a person during the period of the violation of chapter 27, title 37, Idaho Code, or within a reasonable time after such violation; and
- (2) There was no likely source for such property other than the violation of chapter 27, title 37, Idaho Code.

**History.**

I.C., § 37-2804, as added by 1996, ch. 230,  
§ 1, p. 749.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

**37-2805. Preservation of property — Warrant of seizure — Protective orders.** — (1) Upon application of the state of Idaho, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond, or take any other action to preserve the availability of property described in section 37-2801, Idaho Code, for forfeiture under this chapter upon the filing of an indictment or information charging a violation of the uniform controlled substance act for which criminal forfeiture may be ordered and alleging that the property with respect to which the order is sought would, in the event of conviction, be subject to forfeiture under this chapter.

(2) The state may request the issuance of a warrant authorizing the seizure of property subject to forfeiture under this chapter in the same manner as provided for a search warrant. If the court determines that there is probable cause to believe that the property to be seized would, in the event of conviction, be subject to forfeiture and that an order under subsection (1)

of this section may not be sufficient to assure the availability of the property for forfeiture, the court shall issue a warrant authorizing the seizure of such property by the appropriate law enforcement agency upon such terms and conditions as the court shall deem proper.

(3) The court may, upon application of the state of Idaho, enter such appropriate restraining orders or injunctions, require the execution of satisfactory performance bonds, appoint receivers, conservators, appraisers, accountants, or trustees, or take any other action to protect the interest of the state of Idaho in the property subject to forfeiture. Any income accruing to or derived from property subject to forfeiture under this chapter may be used to offset ordinary and necessary expenses to the property which are required by law, or which are necessary to protect the interests of the state of Idaho or third parties.

**History.**

I.C., § 37-2805, as added by 1996, ch. 230,  
§ 1, p. 749.

**37-2806. Institution of proceedings — Third parties.** — Upon the filing of a part II forfeiture request pursuant to section 37-2804, Idaho Code, or in the event of seizure pursuant to a warrant of seizure, or upon entry of an order of forfeiture pursuant to section 37-2801, Idaho Code, the attorney general or appropriate prosecuting attorney shall, if appropriate, institute proceedings pursuant to sections 37-2807 or 37-2808, Idaho Code, or both, within five (5) days of such event.

**History.**

I.C., § 37-2806, as added by 1996, ch. 230,  
§ 1, p. 749.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**37-2807. Personal property — Rights of third parties.** — (1) Within five (5) days of any of the events specified in section 37-2806, Idaho Code, notice, including a copy of the request for forfeiture, shall be given to each co-owner or party in interest who has or claims any right, title or interest in any of such personal property according to one (1) of the following methods:

(a) Upon each co-owner of or party in interest in a titled motor vehicle, aircraft or other conveyance, by mailing notice by certified mail to the address of each co-owner and party in interest as given upon the records of the appropriate department of state or federal government where records relating to such conveyances are maintained.

(b) Upon each secured party and assignee designated as such in any UCC-1 financing statement on file in an appropriate filing office covering any personal property sought to be forfeited, by mailing notice by certified mail to the secured party and the assignee, if any, at their respective addresses as shown on such financing statement.

(c) Upon each co-owner or party in interest whose name and address is known, by mailing notice by registered mail to the last known address of such person.

(2) Within twenty (20) days after the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(3) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) At the hearing, any co-owner or party in interest who has a verified answer on file may show by competent evidence that his interest in the titled motor vehicle, aircraft or other conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the titled motor vehicle, aircraft or other conveyance was being used, had been used or was intended to be used for the purposes described in section 37-2801, Idaho Code.

(b) A co-owner, or claimant of any right, title, or interest in the property may prove that his right, title or interest, whether under a lien, mortgage, security agreement, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the property was being used, had been used or was intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order that portion of the property or interest released to the bona fide or innocent co-owner, purchaser, lienholder, mortgagee, secured party or conditional sales vendor.

(ii) If the amount due to such person is less than the value of the property, the property may be sold at public auction or in another commercially reasonable method by the attorney general or appropriate prosecuting attorney. If sold at public auction, the attorney general, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent co-owner, purchaser, conditional sales vendor, lienholder, mortgagee or secured party of the property, if any, up to the value of his interest in the property.

2. The balance, if any, in the following order:

- (A) To the attorney general or appropriate prosecuting attorney, for all expenditures made or incurred by them in connection with the sale, including expenditure for any necessary repairs, storage or transportation of the property, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

- (B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage

and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this chapter.

(C) The remainder, if any, to the director of the Idaho state police for credit to the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code, or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

3. Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the personal property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

4. In any case, the attorney general, or appropriate prosecuting attorney, may, within thirty (30) days after order of forfeiture, pay the balance due to the bona fide lienholder, mortgagee, secured party or conditional sales vendor and thereby purchase the property for use to enforce this chapter.

**History.**

I.C., § 37-2807, as added by 1996, ch. 230, § 1, p. 749; am. 2000, ch. 469, § 92, p. 1450;

am. 2009, ch. 108, § 6, p. 344.

**STATUTORY NOTES****Cross References.**

Attorney general, § 67-1401 et seq.

Director of Idaho state police, § 67-2901 et seq.

**Amendments.**

The 2009 amendment, by ch. 108, inserted "and driving while under the influence" in subsection (3)(b)(ii)2C.

**37-2808. Real property — Rights of third parties.** — (1) Real property subject to forfeiture under the provisions of this chapter may be seized by the attorney general or appropriate prosecuting attorney upon determining that a parcel of property is subject to forfeiture, by filing a notice of seizure with the recorder of the county in which the property or any part thereof is situated. The notice must contain a legal description of the property sought to be forfeited; provided however, that in the event the property sought to be forfeited is part of a greater parcel, the attorney general or appropriate prosecuting attorney may, for the purposes of this notice, use the legal description of the greater parcel. The attorney general or appropriate prosecuting attorney shall also send by certified mail a copy of the notice of seizure to any persons holding a recorded interest or of whose interest the attorney general or appropriate prosecuting attorney has actual knowledge. The attorney general or appropriate prosecuting attorney shall post a similar copy of the notice conspicuously upon the property and publish a copy thereof once a week for three (3) consecutive weeks immediately following the seizure in a newspaper published in the county. The co-owner or party in lawful possession of the property sought to be forfeited

may retain possession and use thereof and may collect and keep income from the property while the forfeiture proceedings are pending.

(2) In the event of a seizure pursuant to subsection (1) of this section, a request for forfeiture shall be filed with the trial court within the time limit imposed by section 37-2804, Idaho Code. The request shall be served in the same manner as complaints subject to the Idaho rules of civil procedure on all persons having an interest in the real property sought to be forfeited.

(3) Notwithstanding any other provision of this section, upon being satisfied that the interest of a co-owner or claimant should not be subject to forfeiture because they neither knew nor should have known that the real property was being used or had been used for the purposes alleged, or that due to preexisting security interests in such property there is no equity which may be forfeited, the attorney general or appropriate prosecuting attorney may release the property to the co-owner, holder of the security interest, or other claimant.

(4) Within twenty (20) days of the mailing of the notice, the co-owner or party in interest may file a verified answer and claim to the property described in the notice.

(5) If a verified answer is filed within twenty (20) days after mailing of the notice, the forfeiture proceeding against all co-owners and parties in interest who have filed verified answers shall be set for hearing before the court without a jury on a day not less than sixty (60) days after the mailing of the notice; and the proceeding shall have priority over other civil cases.

(a) A co-owner, or claimant of any right, title or interest in the real property sought to be forfeited may prove that his right, title or interest, whether under a lien, mortgage, deed of trust or otherwise, was created without any knowledge or reason to believe that the real property was being used or had been used for the purposes alleged;

(b) Any co-owner who has a verified answer on file may show by competent evidence that his interest in the property sought to be forfeited is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the real property was being used, or had been used in any manner in violation of the provisions of section 37-2801, Idaho Code.

(6) In the event of such proof, the court shall order the release of the interest of the co-owner, purchaser, lienholder, mortgagee or beneficiary.

(a) If the amount due to such person is less than the value of the real property, the real property may be sold in a commercially reasonable manner by the attorney general or appropriate prosecuting attorney. The proceeds from such sale shall be distributed as follows in the order indicated:

(i) To the innocent co-owner, purchaser, mortgagee or beneficiary of the real property, if any, up to the value of his interest in the real property.

(ii) The balance, if any, in the following order:

1. To the attorney general or appropriate prosecuting attorney for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs or maintenance of the real property, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expen-

ditures for witnesses' fees, reporters' fees, transcripts, printing, travel, investigation, title company fees and insurance premiums.

2. The remainder, if any, to the director of the Idaho state police for credit to the drug and driving while under the influence enforcement donation fund created in section 57-816, Idaho Code.

(b) In any case, the attorney general or appropriate prosecuting attorney may, within thirty (30) days after the order of forfeiture, pay the balance due to the innocent co-owner, purchaser, lienholder, mortgagee or beneficiary and thereby purchase the real property for use in the enforcement of this chapter.

**History.** § 1, p. 749; am. 2000, ch. 469, § 93, p. 214;  
I.C., § 37-2808, as added by 1996, ch. 230, am. 2009, ch. 108, § 7, p. 344.

#### STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.

Director of Idaho state police, § 67-2901 et seq.

**Amendments.**

The 2009 amendment, by ch. 108, inserted "and driving while under the influence" in subsection (6)(a)(ii)2.

**37-2809. Proportionality.** — In issuing any order under the provisions of this chapter, the court shall make a determination that the property, or a portion thereof in the case of real property, was actually used in violation of the provisions of this chapter. The size of the property forfeited shall not be unfairly disproportionate to the size of the property actually used in violation of the provisions of this chapter.

**History.**

I.C., § 37-2809, as added by 1996, ch. 230,  
§ 1, p. 749.

**37-2810. Authority of the attorney general.** — With respect to property ordered forfeited under this chapter, the attorney general or appropriate prosecuting attorney is authorized to:

- (1) Restore forfeited property to victims of a violation of this chapter, or take any other action to protect the rights of innocent persons which is in the interest of justice and which is not inconsistent with the provisions of this chapter;
- (2) Compromise claims arising under this chapter;
- (3) Award compensation to persons providing information resulting in a forfeiture under this chapter; and
- (4) Take appropriate measures necessary to safeguard and maintain property ordered forfeited under this chapter pending its disposition.

**History.**

I.C., § 37-2810, as added by 1996, ch. 230,  
§ 1, p. 749.

## STATUTORY NOTES

**Cross References.**

Attorney general, § 67-1401 et seq.

**37-2811. Bar on intervention.** — Except as provided in sections 37-2807 and 37-2808, Idaho Code, no party claiming an interest in property subject to forfeiture under this section may:

(1) Intervene in a trial or appeal of a criminal case involving the forfeiture of such property under this chapter; or

(2) Commence an action at law or equity against the state of Idaho concerning the validity of his alleged interest in the property subsequent to the filing of an indictment or information alleging that the property is subject to forfeiture under this chapter.

**History.**

I.C., § 37-2811, as added by 1996, ch. 230,  
§ 1, p. 749.

**37-2812. Jurisdiction — Depositions.** — The district courts of the state of Idaho shall have jurisdiction over:

(1) Property for which forfeiture is sought that is within the state at the time the action is filed; or

(2) The interest of a co-owner or interest holder in the property if the co-owner or interest holder is subject to personal jurisdiction in this state.

In order to facilitate the identification and location of property declared forfeited after the entry of an order declaring property forfeited to the state of Idaho, the court may, upon application of the state of Idaho, order that the testimony of any witness relating to the property forfeited be taken by deposition and that any designated book, paper, document, record, recording or other material not privileged be produced at the same time and place, in the same manner as provided for the taking of depositions under rule 26 of the Idaho rules of civil procedure.

**History.**

I.C., § 37-2812, as added by 1996, ch. 230,  
§ 1, p. 749.

**37-2813. Disposition of property.** — On the motion of a party and after notice to any persons who are known to have an interest in the property and an opportunity to be heard, the court may order property that has been seized for forfeiture sold, leased, rented or operated to satisfy an interest of any interest holder who has timely filed a proper claim or to preserve the interests of any party. The court may order a sale or any other disposition of the property if the property may perish, waste, be foreclosed on or otherwise be significantly reduced in value or if the expenses of maintaining the property are or will become greater than its fair market value. If the court orders a sale, the court shall designate a third party or state property manager to dispose of the property by public sale or other commercially reasonable method and shall distribute the proceeds in the following order of priority:

- (1) Payment of reasonable expenses incurred in connection with the sale.
- (2) Satisfaction of exempt interests in the order of their priority.
- (3) Preservation of the balance, if any, in the actual or constructive custody of the court in an interest-bearing account, subject to further proceedings under this chapter.

When property is forfeited under this chapter, the attorney general or appropriate prosecuting attorney, may:

- (1) Retain it for official use; and/or
- (2) Sell that which is not required to be destroyed by law and which is not harmful to the public, pursuant to section 37-2807 or 37-2808, Idaho Code.

**History.**

I.C., § 37-2813, as added by 1996, ch. 230,  
§ 1, p. 749.

**STATUTORY NOTES**

**Cross References.**

Attorney general, § 67-1401 et seq.

**37-2814. Forfeiture of substitute property.** — If any of the property described in section 37-2801, Idaho Code, as a result of any act or omission of the defendant:

- (1) Cannot be located upon the exercise of due diligence;
- (2) Has been transferred or sold to, or deposited with, a third party;
- (3) Has been placed beyond the jurisdiction of the court;
- (4) Has been substantially diminished in value; or
- (5) Has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in section 37-2801, Idaho Code.

**History.**

I.C., § 37-2814, as added by 1996, ch. 230,  
§ 1, p. 749.

**37-2815. Construction.** — The provisions of this section shall be liberally construed to effectuate its remedial purposes.

**History.**

I.C., § 37-2815, as added by 1996, ch. 230,  
§ 1, p. 749.

**STATUTORY NOTES**

**Compiler's Notes.**

Section 2 of S.L. 1996, ch. 230 read: "The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any per-

son or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

## CHAPTER 29

### NARCOTIC DRUGS — LICENSING OF DISPENSERS

## SECTION.

37-2901 — 37-2906. [Repealed.]

**37-2901 — 37-2906. Licensing and dispensing of narcotics — Regulation. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 435, §§ 38, 88-92, p. 1436, were repealed by S.L. 1971, ch. 215, § 3, p. 939. For present law, see § 37-2701 et seq.

## CHAPTER 30

### NARCOTIC DRUGS — PRESCRIBING AND DISPENSING — RECORDS

## SECTION.

37-3001 — 37-3045. [Repealed.]

**37-3001 — 37-3045. Persons authorized to dispense narcotics — False or fictitious prescriptions prohibited — Regulation of prescriptions — Dispensing without valid license prohibited. [Repealed.]**

#### STATUTORY NOTES

**Compiler's Notes.**

These sections, which comprised S.L. 1967, ch. 435, §§ 25-28, 40-60, 62-78, 83, 86, 87, were repealed by S.L. 1971, ch. 215, § 3, p. 939. For present law, see § 37-2701 et seq.

## CHAPTER 31

### NARCOTIC DRUGS — TREATMENT OF ADDICTS

## SECTION.

37-3101. Definitions.

## SECTION.

37-3104. Use of drugs by physician in treatment.

37-3102. Request for treatment and rehabilitation — Information confidential.

37-3105. Reports — Form.

37-3103. Treatment or rehabilitation — Procedures.

37-3106 — 37-3110. [Repealed.]

**37-3101. Definitions.** — For the purposes of this act, unless the context clearly indicates a contrary intent:

1. "Physician" means a person licensed to practice medicine or surgery in this state as provided for under chapter 18, title 54, Idaho Code.

2. "Hospital" means a public or private institution licensed pursuant to the laws of this state as provided for under chapter 13, title 39, Idaho Code.

3. "Drug" means a narcotic or hallucinogenic drug as defined in sections 37-2702, 37-2703, and subsection (c) of section 37-3301, Idaho Code.

**History.**

1971, ch. 340, § 1, p. 1325.

**STATUTORY NOTES****Prior Laws.**

Former §§ 37-3101 to 37-3110, which comprised S.L. 1967, ch. 435, §§ 29-37, 39, were repealed by S.L. 1971, ch. 215, § 3 and S.L. 1971, ch. 340, § 6.

**Compiler's Notes.**

Sections 37-2702, 37-2703 and 37-3301 of

the Idaho Code, as referred to in this section, have been repealed and present provisions relating to such definitions are found in § 37-2701 et seq.

The words "this act" refer to S.L. 1971, ch. 340, which is compiled as §§ 37-3101 to 37-3105.

**37-3102. Request for treatment and rehabilitation — Information confidential.** — A person may request treatment and rehabilitation for addiction or dependency to any drug, as defined in section 37-3101[*, Idaho Code*], from a physician qualified to administer such treatment under the provisions of this act; and such physician or any employee or person acting under his direction or supervision shall not report or disclose the name of such person or the fact that treatment was requested or has been undertaken to any law enforcement officer or agency; nor shall such information be admissible as evidence in any court, grand jury, or administrative proceeding unless authorized by the person seeking treatment. A physician may undertake the treatment and rehabilitation of such person or refer such person to another physician or hospital for such purpose. If the person seeking such treatment or rehabilitation is sixteen (16) years of age or older, the fact that such person sought treatment or rehabilitation for such drug addiction or dependency, or that he is receiving such treatment or rehabilitation service, shall not be reported or disclosed to the parents or legal guardian of such person without his consent, and such person who may give legal consent to receive such treatment and rehabilitation under the provisions of this act shall be counseled as to the benefits of involving his parents or legal guardian in his treatment or rehabilitation.

**History.**

1971, ch. 340, § 2, p. 1325; am. 1972, ch. 149, § 1, p. 323.

**STATUTORY NOTES****Prior Laws.**

Former § 37-3102 was repealed. See Prior Laws, § 37-3101.

**Compiler's Notes.**

The bracketed insertion in the first sentence was added by the compiler to conform to the statutory citation style.

The words "this act" refer to S.L. 1971, ch. 340, which is compiled as §§ 37-3101 to 37-3105.

**Effective Dates.**

Section 2 of S.L. 1972, ch. 149 declared an emergency. Approved March 17, 1972.

**37-3103. Treatment or rehabilitation — Procedures.** — A person seeking treatment or rehabilitation for drug addiction or dependency shall

first be examined and evaluated by a physician. Such a physician shall prescribe a proper course of treatment and medication, if needed. The treating physician may further prescribe a course of treatment or rehabilitation and authorize another physician or hospital to provide the prescribed treatment or rehabilitation services. Treatment or rehabilitation services may be provided to a person individually or in a group. Any hospital participating in such treatment or rehabilitation shall not report or disclose to a law enforcement officer or agency the name of any person receiving or engaging in such treatment or rehabilitation, nor shall any person receiving or participating in such treatment or rehabilitation report or disclose the name of any other person engaged in or receiving such treatment or rehabilitation, or that such a program is in existence, to a law enforcement officer or agency. However, any person engaged in or receiving such treatment or rehabilitation may authorize the disclosure of his name and individual participation.

**History.**

1971, ch. 340, § 3, p. 1325.

**STATUTORY NOTES****Prior Laws.**

Former § 37-3103 was repealed. See Prior Laws, § 37-3101.

**37-3104. Use of drugs by physician in treatment.** — A physician may use any drug or medicine which shall be authorized or released by a federal agency or authority with jurisdiction to so act; providing that the physician adheres to the criterion for the use of such drug or medicine as established by the federal agency or authority with jurisdiction to so act. Such drug or medicine may be used to treat any person addicted to or dependent on drugs as the physician or hospital deems appropriate, subject to the provisions of this act.

**History.**

1971, ch. 340, § 4, p. 1325.

**STATUTORY NOTES****Prior Laws.**

Former § 37-3104 was repealed. See Prior Laws, § 37-3101.

340, which is compiled as §§ 37-3101 to 37-3105.

**Compiler's Notes.**

The words "this act" refer to S.L. 1971, ch.

**37-3105. Reports — Form.** — Every physician that provides treatment or rehabilitation services to a person addicted to or dependent upon drugs shall each quarter of every year, commencing July 1, 1971, make a statistical report to the director of the department of health and welfare or his designee in such form and manner as the director of the department of health and welfare shall prescribe for each such person treated or to whom rehabilitation services were provided during the preceding quarter. The

form of the report prescribed shall be furnished by the director of the department of health and welfare and be so designated that a carbon copy shall be sent quarterly to the director of the Idaho state police and the state board of pharmacy; the report shall include the doctor's signature. The name or address of any person treated or to whom rehabilitation services were provided shall not be reported.

**History.**

1971, ch. 340, § 5, p. 1325; am. 1981, ch.

114, § 5, p. 169; am. 2000, ch. 469, § 94, p. 1450.

**STATUTORY NOTES****Cross References.**

Department of health and welfare, § 56-1001 et seq.

Director of Idaho state police, § 67-2901 et seq.

**Prior Laws.**

Former § 37-3105 was repealed. See Prior Laws, § 37-3101.

**Compiler's Notes.**

Section 42 of S.L. 1981, ch. 114 read: "The

provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this act."

**Effective Dates.**

Section 7 of S.L. 1971, ch. 340 declared an emergency. Approved March 30, 1971.

**37-3106 — 37-3110. Reports concerning treatment of addicts. [Repealed.]****STATUTORY NOTES****Compiler's Notes.**

For repeal of former §§ 37-3106 to 37-3110, see Prior Laws, § 37-3101.

**CHAPTER 32**  
**LEGEND DRUG CODE IMPRINT****SECTION.**

37-3201. Definitions.

37-3202. Code imprint required.

37-3203. List of legend drugs provided.

**SECTION.**

37-3204. Exemptions may be permitted.

37-3205. Seizure.

37-3206 — 37-3226. [Repealed.]

**37-3201. Definitions. —** As used in this chapter:

(1) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor of the drug, or both;

(2) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label even though he is not the actual manufacturer of the drug;

(3) "Solid dosage form" means capsules or tablets intended for oral use;

(4) "Legend drug" means any drug defined by section 54-1705(31), Idaho Code.

**History.**

I.C., § 37-3201, as added by 1981, ch. 41,

§ 1, p. 63; am. 2002, ch. 26, § 3, p. 29; am. 2002, ch. 69, § 1, p. 155; am. 2006, ch. 290,

§ 3, p. 888; am. 2009, ch. 244, § 1, p. 748; am. 2011, ch. 135, § 1, p. 375.

#### STATUTORY NOTES

##### Prior Laws.

Former §§ 37-3201 to 37-3226, which comprised S.L. 1967, ch. 435, §§ 24, 93 to 116, 118; S.L. 1970, ch. 251, §§ 1 to 3, were repealed by S.L. 1971, ch. 215, § 3, p. 939.

##### Amendments.

This section was amended by two 2002 acts which appear to be compatible and have been compiled together.

The 2002 amendment, by ch. 26, § 3, substituted "section 54-1705(27)" for "section 54-1705(23)" in subdivision (4).

The 2002 amendment, by ch. 69, § 1, sub-

stituted "section 54-1705(26)" for "section 54-1705(23)" in subdivision (4).

The 2006 amendment, by ch. 290, updated the section reference in (4).

The 2009 amendment, by ch. 244, updated the statutory reference in subsection (4) to account for the 2009 amendment of § 54-1705.

The 2011 amendment, by ch. 135, updated the section reference in subsection (4) to reflect the 2011 amendment of § 54-1705..

##### Effective Dates.

Section 6 of S.L. 2006, ch. 290 declared an emergency. Approved March 31, 2006.

**37-3202. Code imprint required.** — No legend drug in solid dosage form may be manufactured or distributed in this state unless it is clearly marked or imprinted with a code imprint identifying the drug and the manufacturer or distributor of the drug.

##### History.

I.C., § 37-3202, as added by 1981, ch. 41, § 1, p. 63.

#### STATUTORY NOTES

##### Prior Laws.

Former § 37-3202 was repealed. See Prior Laws, § 37-3201.

**37-3203. List of legend drugs provided.** — All manufacturers and distributors of legend drugs in solid dosage form shall, upon request, provide to the board of pharmacy a listing of all such legend drugs identifying by code imprint the manufacturer and the specific type of drug. Such listing shall at all times be kept current by all manufacturers and distributors subject to this chapter.

##### History.

I.C., § 37-3203, as added by 1981, ch. 41, § 1, p. 63.

#### STATUTORY NOTES

##### Prior Laws.

Former § 37-3203 was repealed. See Prior Laws, § 37-3201.

**37-3204. Exemptions may be permitted.** — The board of pharmacy may grant exemptions from the requirements of this chapter upon application by any drug manufacturer or distributor showing size, physical characteristics, or other unique characteristics which render the application of a

code imprint to a legend drug subject to this chapter impractical or impossible. Any such exemption granted by the board shall be included by the manufacturer or distributor in the listing required by section 37-3203, Idaho Code, describing the physical characteristics and type of drug to which the exemption relates.

**History.**

I.C., § 37-3204, as added by 1981, ch. 41,  
§ 1, p. 63.

**STATUTORY NOTES****Prior Laws.**

Former § 37-3204 was repealed. See Prior Laws, § 37-3201.

**37-3205. Seizure.** — All legend drugs in solid dosage form that are possessed, distributed, sold or offered for sale in violation of the provisions of this chapter shall be deemed contraband and shall be seized by the board of pharmacy and summarily forfeited to the state.

**History.**

I.C., § 37-3205, as added by 1981, ch. 41,  
§ 1, p. 63.

**STATUTORY NOTES****Prior Laws.**

Former § 37-3205 was repealed. See Prior Laws, § 37-3201. the act should be in full force and effect January 1, 1983.

**Effective Dates.**

Section 2 of S.L. 1981, ch. 41 provided that

**37-3206 — 37-3226. Encouraging minor to use narcotics unlawful — Unlawful transportation of narcotics — Seizure, procedure — Hearing Distribution of seized narcotics — Rules and regulations. [Repealed.]**

**STATUTORY NOTES****Compiler's Notes.**

For repeal of these former sections, see the Prior Laws, § 37-3201.

**CHAPTER 33****RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS****SECTION.**

37-3301. Definitions.

37-3302. Sales of pseudoephedrine products.

37-3303. Limitations on sales and purchases.

**SECTION.**

37-3304. Penalties.

37-3305. Preemption.

37-3306. Application.

**37-3301. Definitions.** — As used in this chapter:

(1) "Pseudoephedrine product" means any compound, mixture or preparation containing any detectable quantity of pseudoephedrine, its salts or optical isomers, or salts of optical isomers.

(2) "Retailer" means any person, other than a wholesaler, who sells or offers for sale or distributes at retail pseudoephedrine products, irrespective of the quantity or amount or the amount of sales of such pseudoephedrine products.

**History.**

I.C., § 37-3301, as added by 2006, ch. 95,  
§ 1, p. 269.

#### STATUTORY NOTES

**Prior Laws.**

Former title 37, chapter 32, consisting of §§ 37-3301 to 37-3321, which comprised S.L. 1967, ch. 434, §§ 1 to 21; S.L. 1968 (2nd E. S.), ch. 11, § 1; S.L. 1970, ch. 148, §§ 3 to 7, were repealed by S.L. 1971, ch. 215, § 3. For present law see § 37-2701 et seq.

**37-3302. Sales of pseudoephedrine products.** — A retailer shall ensure that:

(1) Pseudoephedrine products offered for sale are located either in an area where the public is not permitted or inside a locked display case; and

(2) All distributions of pseudoephedrine products are conducted by an employee of the retailer. No pseudoephedrine products shall be dispensed by a self-service system of any kind.

**History.**

I.C., § 37-3302, as added by 2006, ch. 95,  
§ 1, p. 269.

**37-3303. Limitations on sales and purchases.** — (1) It shall be unlawful for any retailer to knowingly sell, transfer or otherwise furnish in a single transaction a pseudoephedrine product or products containing more than nine (9) grams of pseudoephedrine.

(2) It shall be unlawful for any person to knowingly purchase a pseudoephedrine product or products containing more than nine (9) grams of pseudoephedrine from a retailer in a single thirty (30) day period.

(3) At the time of distribution or sale of a pseudoephedrine product or products, the retailer shall ensure that the purchaser presents a government-issued photo identification.

**History.**

I.C., § 37-3303, as added by 2006, ch. 95,  
§ 1, p. 269.

**37-3304. Penalties.** — A person who knowingly violates any provision of this chapter shall be guilty of a misdemeanor.

**History.**

I.C., § 37-3304, as added by 2006, ch. 95,  
§ 1, p. 269.

**STATUTORY NOTES****Cross References.**

Penalty for misdemeanor when not otherwise provided, § 18-113.

**37-3305. Preemption.** — The provisions of this chapter shall be construed to preempt more stringent regulation of retail sales of pseudoephedrine products by any county, city or other political subdivision.

**History.**

I.C., § 37-3305, as added by 2006, ch. 95,  
§ 1, p. 269.

**37-3306. Application.** — The provisions of this chapter shall not apply to a pseudoephedrine product dispensed pursuant to a valid prescription unless otherwise provided by law.

**History.**

I.C., § 37-3306, as added by 2006, ch. 95,  
§ 1, p. 269.

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